

RUAN  
TRANSPORT  
CORPORATION

145077

November 3, 1994

Marsha A. Adams  
5HSM-5J, Responsible Party  
Search Section  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

RECEIVED  
NOV 9 1994  
SUPERFUND PROGRAM  
MANAGEMENT BRANCH

3200 RUAN CENTER  
666 GRAND AVENUE  
DES MOINES, IOWA  
50309  
515-245-2500

Re: 104 (e) Request for Sauget Area 1

Dear Ms. Adams:

In the future please direct all correspondence to the following address:

Kenneth L. Kessler  
Director of Legal Services  
Ruan Transport Corporation  
P.O. Box 855  
Des Moines, IA 50304

Attached are Ruan Transport Corporation's responses to the 104(e) request. They are based on information currently available. Additional investigations are being made and this information will be supplemented if anything is found.

Yours truly,

RUAN TRANSPORT CORPORATION



Kenneth L. Kessler  
Director of Legal Services

pb

Attachment

## **AFFIDAVIT**

I, Kenneth L. Kessler, Director of Legal Services for Ruan Transport Corporation, having been duly sworn, hereby state:

1. I am the person authorized by Ruan Transport Corporation to respond to the 104(e) Request to which this is attached.
2. I have made a complete and thorough review of all documents, information, and sources relevant to the Request.
3. I hereby certify that the Response to which this is attached is complete and contains all information and documents responsive to the Request to the best of my knowledge and belief.

Dated this 3rd day of November, 1994.

  
\_\_\_\_\_  
Kenneth L. Kessler  
Director of Legal Services

Subscribed and sworn to before me this 3rd day of November, 1994.

  
\_\_\_\_\_  
Notary Public

**RUAN TRANSPORT CORPORATION'S  
RESPONSES TO  
104 (e) REQUEST - SAUGET AREA 1**

1. Persons consulted in the preparation of the answers.  
Mike Smith, Director of Environmental Affairs  
Susan Wilson, Properties Manager  
LaVerne Milbrandt, Treasurer  
Bill Giles, VP Research & Engineering  
Mike Mefford, Division Sales Manager  
Kenneth Kessler, Director of Legal Services  
Lee VerSteegh, Controller

All of the above are Ruan Transport Corporation employees in Des Moines, IA.

2. Identification of documents consulted.

They are attached to the specific responses to the following questions or are attached and identified by tab 2.

3. Others who may have information.  
Cerro Copper Products Co., St. Louis, MO  
Monsanto Company, St. Louis, MO  
Midwest Rubber Reclaiming Division of Empire Chem., Inc.,  
Binghamton, NY  
Illinois Environmental Protection Agency, Springfield, IL  
Metro Construction Company, 1300 Queeny Ave., Cahokia, IL  
John Lorentzen, 2218 Mousett, Cahokia, IL  
Harold Schmidt, 1300 1/2 Queeny, East St. Louis, IL  
Harold Waggoner and Waggoner & Company, Collinsville, IL  
Others as identified in the attached documents.

4. EPA Identification Numbers:  
Ruan Transport Corporation was not issued an EPA Identification number for its site at Queeny and Falling Springs Road.
5. Identify all persons with knowledge or information about generation, transportation, disposal at the Site.  
Mike Mefford, Division Sales Manager, for Ruan Transport Corporation, and others identified in response to the specific requests listed herein.
6. Identify the acts or omissions of others relating to the release of hazardous substances, etc.  
See attached letter identified as number 6.

7. Describe in detail Ruan Transport's and Waggoner & Company's operations at the facility between 1920 and 1982.  
To the best of our knowledge and belief Waggoner operated a trucking company that transported chemicals in the 1960's and up to the mid '70's. In March of 1974 Ruan entered into a contract to lease and eventually purchase certain assets of Waggoner including the facility subject to the approval of the Interstate Commerce Commission. On June 3, 1974 approval and consummation occurred on a temporary basis. Final approval was not granted and consummation did not occur until June 27, 1978. Sometime in 1978 Metro Construction Company leased the area containing the building(s) and surrounding area which it then purchased in 1981. Ruan can not address the operations of Waggoner at the facility. When Ruan took over the facility, it only operated out of it for a short period of time, probably in the neighborhood of less than six (6) months. The business it hoped to handle for Monsanto did not materialize and it handled its other customers from other locations. There was no mechanical or repair work on the trucks done there nor was any washing or dumping of materials by Ruan. For further information see number 9 below and documents attached which are marked number 7.
8. Describe Waggoner's environmental practices at the property now owned by Ruan.  
Ruan has no knowledge of Waggoner's environmental practices as they relate to Ruan's current property.
9. Did Ruan Transport operate a similar business using Waggoner's facility.  
Ruan operated a similar business in that it transported freight as a for hire trucking company as did Waggoner. However, while it is believed that Waggoner carried out maintenance and truck washing functions on the portion of the facility later sold to Metro Construction Company, Ruan did not do so. Ruan retained the services of Rogers Cartage to clean its equipment (See attachment marked No. 9).
10. Documents or information indicating others discharged waste contaminants into Dead Creek or lagoons.  
See attached document dated August 15, 1974, marked as number 6.
11. Identify organic or inorganic wastes/products at the facility.  
Unknown but investigation continues.
12. Documents relating to the volume or characteristics of the above products.  
None have been located, but investigation continues.
13. Were all waste materials and products accepted, stored, handled or used at the facility by Ruan or Waggoner disposed of on "plant" property.  
It is presumed that "plant" means "facility". The actions of Waggoner are beyond the knowledge of Ruan Transport and thus it can not answer for them. Ruan did not dispose of any such materials on the facility.

14. Were disposal activities carried out by employees or outside personnel.  
Ruan would have retained the services of local garbage and/or waste haulers. Their names are no longer available, but investigation continues.
15. Leo and Paul Sauget's ownership of Sites G, H and I.  
This respondent can not address the actions of Waggoner in relation to the subparts of this request. Ruan has been unable to locate any records or personnel who recall doing any business with Leo Sauget, Industrial Salvage & Disposal, Inc., Paul Sauget or Sauget & Company.
16. Did Ruan ever secure the services of Harold Waggoner or Waggoner & Company to arrange for the disposal of liquid chemical wastes at the facility.  
No.
17. Identify the approximate time frame, nature and characterization of Waggoner's discharges into Dead Creek prior to the construction of the Site L lagoons.  
Unknown
18. Was it common practice amongst Sauget Area businesses to discharge liquid chemical wastes or sanitary wastewaters into Dead Creek prior to the construction of the Site L lagoons by Waggoner?  
Ruan does not have any knowledge relating to such practices either in the affirmative or negative.
19. Were there any liquid chemical wastes or sanitary wastewaters discharged into Dead Creek after the construction of the Site L lagoons?  
None to our knowledge.
20. Provide all documents indicating:
  - (a) Those businesses that utilized Waggoner's services.  
See attached material labeled number 20.
  - (b) Whether Monsanto sent trucks to Waggoner for cleaning.  
Unknown
  - (c) Whether other trucking firms doing business with Monsanto used Waggoner's services.  
Unknown
21. Describe the methods used by Ruan and Waggoner to handle solid wastes at this facility.  
Ruan can not comment on Waggoner's methods as it has no knowledge of Waggoner's activities in this area. It is Ruan's corporate policy to have third parties such as waste disposal companies handle such material and it is assumed this would have been the case at this facility for the short time Ruan utilized it. However, no records have been located which would identify such companies. Further investigation continues.

22. Did Ruan or Waggoner accept any cover materials for use at the Site L lagoons from Paul Sauget or Sauget & Company?

To the best of its knowledge Ruan did not accept such materials. It can not speak on behalf of Waggoner.

23. Has Ruan or Waggoner ever accepted waste materials or hazardous substances for transportation to and/or disposal at any portion of the Sauget Area 1 Site from any person?

Ruan's answer is no.

This respondent can not answer on behalf of Waggoner.

RUAN  
TRANSPORT  
CORPORATION

#2

June 1, 1994

Joseph M. Kellmeyer, Esq.  
Coburn & Croft  
One Mercantile Center, Suite 2900  
St. Louis, MO 63101

Re: Cerro Copper Products v.  
Monsanto Company

3200 RUAN CENTER  
666 GRAND AVENUE  
DES MOINES, IOWA  
50309  
515-245-2500

Dear Mr. Kellmeyer:

We have concluded the search of our records in response to your subpoena served April 12th.


In order to save you from having to come to Des Moines, I am attaching copies of the material we have found.

They are:

1. Letter from EPA dated December 27, 1989.
2. Letter from Monsanto dated January 22, 1990.
3. Letter from EPA dated March 7, 1990 with attachment.
4. Letter from Monsanto dated March 20, 1990.
5. Letter from Monsanto dated April 17, 1990.
6. Fax from Monsanto dated May 24, 1990.
7. Letter from Monsanto dated June 27, 1990.
8. Letter from Monsanto dated June 28, 1990.
9. Letter from Monsanto dated July 5, 1990.
10. Letter from Ruan dated August 15, 1990.
11. Letter from EPA dated August 8, 1990.
12. Letter from James Stewart, attorney, dated August 21, 1990.
13. Letter from EPA dated December 20, 1990 with copy of consent order.
14. Letter and check from Ruan dated December 27, 1990.
15. Letter from Cerro Copper dated January 7, 1990.
16. Letter from Midwest Rubber dated January 4, 1991.
17. Letter from Monsanto dated August 1, 1990.
18. Letter from Ruan with Access Agreement dated August 22, 1990.
19. Letter from Monsanto dated October 1, 1991.

Yours truly,

RUAN TRANSPORT CORPORATION

  
Kenneth L. Kessler  
Director of Legal Services

pb  
Attachments

JAN 2 1990



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF

5HSM-12

DEC 4 7 1989

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Ruan Transportation  
Box 855  
Des Moines, IA 50304

RE: Dead Creek Site, Sauget, Illinois Site No. 60

Dear Sir or Madam:

The United States Environmental Protection Agency (U.S. EPA) in cooperation with the Illinois Environmental Protection Agency has been conducting response actions to address contamination at the Dead Creek Site in Illinois. U.S. EPA took these actions under authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., as subsequently amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 (CERCLA as amended). Prior to undertaking these response actions, U.S. EPA determined that there was a release or threatened release of hazardous substances from the Dead Creek Site.

During the response, U.S. EPA undertook several actions at the site. This included the erection of 4,146 feet of cyclone fencing to enclose the contamination and to prevent entry into this abandoned disposal area.

Response costs associated with this site have been incurred by U.S. EPA. The approximate U.S. EPA response costs identified up to December 18, 1989 for the above referenced Site are \$49,974.51. A summary is enclosed.

Information available to U.S. EPA indicates among other things that you are potentially responsible for the release, or threat of release of hazardous substances from the site. Pursuant to the provisions of Section 107(a) of CERCLA, as amended, and based on evidence currently available to the Agency, U.S. EPA believes that you may be liable for the payment of all costs incurred by U.S. EPA in connection with the site. The potentially responsible parties are jointly and severally liable for the whole amount.

Such payment must be made to the U.S. EPA Hazardous Substances Superfund established pursuant to Section 221 of CERCLA, as amended, which is administered by U.S. EPA. Please send your check to U.S. EPA - Region V,



Attn: Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673. Place the site identification number on the check. Please send a copy of your payment check to Shirley Dorsey, U.S. EPA, Region V, Waste Management Division (5HSM-TUB7), 230 South Dearborn Street, Chicago, Illinois 60604.

We hereby request that you make restitution by payment of the amount in this letter plus interest, together with any sums hereafter expended by the Agency in connection with the site pursuant to authority of CERCLA, as amended. Pursuant to Section 107(a) of CERCLA, as amended, interest shall begin accruing as of the date of this demand, if payment is not received within thirty (30) days of the date of this letter.

If you desire to discuss your liability with U.S. EPA, please contact Elizabeth Doyle, Assistant Regional Counsel, in writing not later than thirty (30) days after the date of this letter. Ms. Doyle may also be reached by phone at (312) 886-7951.

If we do not receive a response from you within this time frame, the U.S. EPA will assume that you have declined to reimburse the Fund for the site expenditures, and pursuant to CERCLA, as amended, U.S. EPA may pursue civil litigation against you.

The name of other potentially responsible parties (PRPs) receiving this request for payment are enclosed with this letter to facilitate organization among the identified parties concerning payment. The PRPs should work out an allocation among themselves to apportion costs.

Sincerely yours,

*John Kelley*  
John Kelley, Chief  
Superfund Program Management Branch

Enclosures

cc: William Child, Director  
Division of Land Pollution Control  
Illinois Environmental Protection Agency  
2200 Churchill Road  
P.O. Box 19276  
Springfield, Illinois 62794-9276

DEAD CREEK POTENTIALLY RESPONSIBLE PARTY LIST

1. Cerro Copper Products Company  
P.O. Box 681  
East St. Louis, IL 62202
2. Midwest Rubber Reclaiming  
P.O. Box 2349  
East St. Louis, IL 602202
3. Ruan Transportation  
Box 855  
DesMoines, IA 50304
4. Monsanto Chemical Company  
500 Monsanto Avenue  
Sauget, IL 62206-1198

**CUMULATIVE COST SUMMARY  
DEAD CREEK, IL  
SUPERFUND SITE # 60  
PREPARED 12/11/89**

EPA EXPENDITURES	Cumulative Costs <u>Through October 31, 1989</u>
<b>EPA PAYROLL —</b>	
-- Headquarters	\$ 0.00
-- Regional	6,624.80
<b>INDIRECT COST —</b>	
	4,640.10
<b>EPA TRAVEL —</b>	
-- Headquarters	0.00
-- Regional	1,381.49
<b>FIELD INVESTIGATION TEAM CONTRACT—</b>	
--ECOLOGY AND ENVIRONMENT (68-01-6056)	5,773.12
<b>OTHER EXPENDITURES—</b>	
WDM OFFICE SUPPLIES (58589GGBX)	110.00
--OSC LET CONTRACT(68-01-6620)	30,845.00
--OSC LET CONTRACT(68-85-0151)	400.00
--OSC LET CONTRACT(68-85-0152)	<u>200.00</u>
TOTAL EPA COSTS BEFORE INTEREST	\$ 49,974.51
Pre-Judgement Interest	<u>0.00</u>
TOTAL EPA COSTS FOR DEAD CREEK	\$ 49,974.51
TOTAL COSTS RECOVERED TO DATE	<u>0.00</u>
TOTAL EPA UNRECOVERED COSTS DEAD CREEK	\$ <u><u>49,974.51</u></u>

**Please Note:** National Contract Laboratory program costs, if incurred, may be significantly understated. These costs do not include any lab costs that may have been billed to EPA prior to FY 1986 and no estimate of the CLP Sample Management Cost (ranges from 6.1 % to 17% of Analytical costs) is provided. A complete accounting of Contract Laboratory Costs is normally provided by VIAR

# Monsanto

LAW DEPARTMENT

Monsanto Company  
800 N. Lindbergh Boulevard  
St. Louis, Missouri 63167  
Phone: (314) 694-1000

January 22, 1990

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Ms. Elizabeth Doyle  
United States Environmental Protection Agency  
Region 5  
230 South Dearborn St.  
Chicago, IL 60604

Re: Dead Creek Site  
Sauget, Illinois Site No. 60  
EPA Demand for Costs Dated December 27, 1989

Dear Ms. Doyle:

This letter is a timely response to the United States Environmental Protection Agency (U.S. EPA) letter dated December 27, 1989, which was sent to Monsanto Chemical Company, Cerro Copper Products Company, Midwest Rubber Reclaiming, and Ruan Transportation.

You indicated in that letter that during a response action, U.S. EPA undertook "several actions" at the site, "including the erection of 4,146 feet of cyclone fencing to inclose the contamination and to prevent entry into the abandoned disposal area." Your letter, among other things, demanded that within 30 days after the date of the U.S. EPA letter, the Companies listed as recipients of your letter pay the U.S. EPA Hazardous Substances Superfund the sum of \$49,974.51, plus interest, in reimbursement of alleged costs EPA has incurred with respect to the above mentioned response action.

Monsanto is unable to make the payment you have demanded for a number of reasons, including the fact we are unable to discern the location of the above discussed fence given the information that was provided to us by the U.S. EPA. Further, your letter only contains a skeletal outline of your cost and leaves us unable to determine whether the costs were lawfully incurred, were consistent with the National Contingency Plan, were reasonable in amount, or for that matter, were an expense to which Monsanto bears responsibility.

Ms. Elizabeth Doyle  
January 22, 1990  
page 2

In addition to the concerns previously expressed, what was the basis for the selection of the four companies named as recipients to your December 21, 1989 letter, and, who were the contractor(s) selected for the project?

As you can see, many questions remain concerning the U.S. EPA demand for payment. If the U.S. EPA is prepared to provide Monsanto with documentation and information to support the U.S. EPA claim, and if you are prepared to extend your payment deadline to provide a reasonable period of time for consideration of that documentation and information and for payment, Monsanto will be willing to consider your demand.

Monsanto is fully prepared to discuss this matter with U.S. EPA in a good faith effort to resolve whatever claims U.S. EPA may have against Monsanto, and to avoid the necessity and expense of litigation. If you have further questions, please contact me at (314) 694-6032.

Sincerely,

*N. Cornell Boggs, III*

N. Cornell Boggs, III  
Environmental Attorney



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.  
CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:

March 7, 1990

N. Cornell Boggs, III  
Environmental Attorney  
Monsanto Company  
800 N. Lindbergh Boulevard  
St. Louis, Missouri 63167

Re: Dead Creek Site No. 60

Dear Mr. Boggs:

This is in response to your letter of January 22, 1990, in which you requested additional information regarding Dead Creek Site No. 60 (the site).

Dead Creek Site No. 60, also known as Creek Segment B, is bordered by Judith Lane on the south and Queeny Avenue to the north in Sauget, Illinois. In 1982, the United States Environmental Protection Agency (U.S. EPA) contracted with a local fence contractor to install a chain link fence around this portion of the Dead Creek. Attached is a computerized summary of U.S. EPA's costs in connection with the site. Monsanto was named as a PRP because its hazardous waste producing facility is upstream of the site and Monsanto is known to have discharged process wastes into the creek prior to 1970.

This information should address the concerns expressed in your January 22, 1990, letter. As we discussed during our phone conversation, it is in both our best interests to resolve this matter expeditiously; however, if U.S. EPA does not receive payment of its demand within thirty (30) days, we will seriously consider initiating litigation in this matter. Should you have any questions regarding this site, please do not hesitate to contact me at (312) 886-7951.

Very truly yours,

Elizabeth Doyle  
Assistant Regional Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION V

DATE: December 18th, 1989

SUBJECT: Superfund Site No.. 60  
Dead Creek, IL  
Annotated Spur Request

FROM: Richard D. Hackley, Team Leader *R. D. Hackley*  
Management Support Unit  
Superfund Accounting Section

THROUGH: Anthony Audia, Chief  
Superfund Accounting Section  
Financial Management Branch      /s/ Anthony Audia, Chief  
Superfund Accounting Section

TO: Lynn Peterson, Acting Chief  
Solid Waste & Emergency Response Branch

Tom Marks  
Regional Cost Recovery Coordinator  
Superfund Program Management Branch

The attached Cumulative Cost Summary outlines all of the cumulative cost expenditures in the Integrated Financial Management System for the Dead Creek, IL site.

Also attached are computer reports which list all the obligations and disbursements in the Integrated Financial Management System. One report shows all the hours charged to the site by Region V and Headquarters' personnel, and the salary costs associated with those hours.

We have computed and included for your information Region V's indirect costs. Based on adjustments recommended by the office of inspector General's Superfund audit for Fiscal Years 83 through 87, final indirect cost rates will be \$71.00 (FY83) \$61.00 (FY84), \$53.00 (FY85), \$51.00 (FY86), and \$53.00 (FY87), respectively. FY88, FY89, and FY90 will also be computed at the \$53.00 rate until a final audit for those years is completed and an indirect cost recommendation has been made. The computation is included on an additional cumulative payroll report.

The third report lists all of the non-payroll and indirect cost expenses related to the site, i.e., travel, shipping purchases, state assistance agreement, Interagency Agreement and contractor costs. We have also attached a listing that gives definitions of the various object class codes that may appear on the reports.

If you have any questions or require any additional assistance, please contact Richard Hackley at 3-8838.

Attachments



## OBJECT CLASS LIST

OBJECT CLASS	DEFINITION
21.11	Per Diem & Subsistence while on Travel.
21.13	Common Carrier.
21.14	Privately Owned Vehicle.
21.15	Commercial Rental Vehicle.
21.17	Incidental Costs.
22.09	Other Transportation - Other expenses such as parcel post, contractual charges for the transportation and care to things.
	Management & Support Contracts - Contracts for management Support, or administrative requirements not otherwise classified.
25.35	Program Contracts - Planned dollars for contracts which support program operations. Included in this category are contracts for monitoring, for surveillance and analysis, for Regional laboratory analysis and analysis of programs.
25.70	Interagency Agreements - Contracts and agreements with other Government Agencies.
25.76	Site Supervision & Development Interagency Agreements - Agreements for the purpose of construction monitoring, investigating, studying and cleaning up hazardous waste sites or emergency response on spills.
31.06	Protective Equipment and Clothing - Personal.
31.80	Other Equipment valued at more than \$500.
31.90	Other Equipment valued at less than \$500.
41.83	Investigations, Surveys, or Studies Awards to governmental or non-governmental or individuals for investigations, surveys, or studies of solid waste pollution.
41.85	Superfund Remedial Planning & Implementation Awards to organization or individuals for remedial planning or disposal for hazardous materials.

# Monsanto

LAW DEPARTMENT

Monsanto Company  
800 N. Lindbergh Boulevard  
St. Louis, Missouri 63167  
Phone: (314) 694-1000

April 17, 1990

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Ms. Elizabeth Doyle  
United States Environmental Protection Agency  
Region 5  
230 South Dearborn St.  
Chicago, IL 60604

Re: Dead Creek Site  
Sauget, Illinois Site No. 60  
EPA Demand for Costs Dated December 27, 1989  
and EPA Correspondence Dated March 7, 1990

Dear Ms. Doyle:

This letter is in response to the United States Environmental Protection Agency (U.S. EPA) letter dated March 7, 1990 which responded to my correspondence of January 22, 1990, all regarding costs which your letter indicated were incurred by the U.S. EPA at Dead Creek Site No. 60 in 1982 when the Agency contracted with a local fence contractor to install a chain link fence along a portion of Dead Creek.

By a telephone call of April 3, 1990, I informed you that I had contacted counsel representing Cerro Copper Products Company, Midwest Rubber Reclaiming, and Ruan Transportation, the other companies who were listed as recipients of the Agency's December 27, 1989 demand letter. I have also forwarded to each of these counsel a copy of my January 22 correspondence to you as well as your March 7 reply letter. Following discussions with these counsel, I can inform you that all of the parties are interested in negotiating with the Agency to reach a settlement in this matter.

Following review of the data that you provided to support the EPA's cost figure, counsel have all expressed concern as to whether the preponderance of the Agency's costs are properly payable. Specifically, out of the \$49,974.51 which your letter indicates were incurred by the Agency, all but \$7,228.10 were incurred prior to 1986. Given that even the Demand Letter was not sent until December 27, 1989, counsel believe that the statute of limitations for removal actions stated at CERCLA §113(g)(2) bars recovery of the pre-1986 costs. Although you have indicated that the Agency's policy does not support this position, 7th Circuit

Ms. Elizabeth Doyle  
April 17, 1990  
page 2

law clearly does. Given this precedent, counsel are having a difficult time recommending to their respective managements that they should pay the full costs listed in the Agency's demand letter. Counsel also have questions concerning the back-up information that was provided. For example, what was an Agency FIT team doing in 1988 to incur a \$5773.12 expenditure for a fence constructed in 1982 ?

Some or all of the parties involved are prepared to pay the Agency a total of \$7,228.10 for the costs incurred during and after 1986. The parties would also consider paying some small premium in addition to this sum in order to resolve this matter and to avoid the necessity and expense of litigation. I would appreciate your contacting me at (314) 694-6032 to discuss the Agency's position regarding this settlement offer.

Sincerely,



N. Cornell Boggs, III  
Environmental Attorney

cc: Paul E. Shorb, III, Esq.  
James L. Stewart, Esq.  
✓ Kenneth Kessler, Esq.

# Monsanto

LAW DEPARTMENT

Monsanto Company  
800 N. Lindbergh Boulevard  
St. Louis, Missouri 63167  
Phone: (314) 694-1000

March 20, 1990

BY OVERNIGHT EXPRESS

\* Kenneth Kessler, Esq.  
~~General Counsel~~  
Ruan Transportation  
666 Grand Avenue  
Des Moines, IA 50309

Paul Shorb, Esq. ~~or star(?)~~  
Beveridge & Diamond  
1350 "Eye" Street, N.W.  
Washington, DC 20005

Re: Dead Creek Site  
Sauget, Illinois Site No. 60  
EPA Demand for Costs Dated December 27, 1989

Dear Counsel:

The attached letter, dated March 7, 1990, was received on March 15, 1990 from Elizabeth Doyle, Assistant Regional Counsel, U.S. EPA Region 5, regarding the above captioned matter. I have also attached a letter that I wrote to Doyle on January 22, 1990, wherein I indicated that Monsanto was unable to make the payment demanded by the EPA based upon the inadequate information provided.

\* If your schedules permit, I would like to have a short conference call on March 28, 1990 at 9:00 a.m. (10:00 a.m. east coast) to discuss the U.S. EPA correspondence. I will send a copy of this letter to James Stewart, Esq., of Lowenstein, Sandler (Counsel for Cerro Copper), who is already in receipt of the Doyle letter. I would appreciate your contacting my secretary, Deborah Riley, at (314) 694-2991 regarding your availability on March 28th.

Sincerely,

*N. Cornell Boggs, III*

N. Cornell Boggs, III  
Environmental Attorney \*

*State of Minnesota*  
cc: James Stewart, Esq.  
Attachments

# Monsanto

## FACSIMILE TRANSMISSION

MONSANTO COMPANY  
800 N. LINDBERGH BLVD.  
ST. LOUIS, MISSOURI 63167  
PHONE: (314) 694-1000

DATE: MAY 24/90

TO BE COMPLETED BY MESSAGE CENTER OPERATOR

TIME CALL PLACED

CONFIRMATION CALL

### RECIPIENT

NAME OF

SEE

KENNETH KESSLER

COMPANY

RHIAN TRANSPORTATION

STATE OR COUNTY

WINNEBAGO, IOWA

FACSIMILE PHONE NO.

(515) 245-2611

CONFIRMING PHONE NO. IF  
AUTOMATIC

### SENDER

CORNELL BOLLES III

ACCOUNT NUMBER

TELEPHONE NUMBER

(314) 694-6032

NUMBER OF PAGES 8 INCL. COVER

OPERATOR

LESTER

BROWN

SENT FROM



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.  
CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF.

MAY 21 1990

N. Cornell Boggs, III  
Environmental Attorney  
Monsanto Company  
800 N. Lindbergh Boulevard  
St. Louis, Missouri 63167

Re: Dead Creek Site No. 60  
Sauget, Illinois

Dear Mr. Boggs:

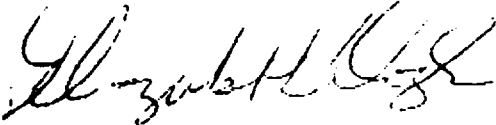
This is in response to your letter of April 17, 1990, in which you indicated that the recipients of the United States Environmental Protection Agency's (U.S. EPA's) demand letter regarding Dead Creek Site No. 60 (the site) are interested in reaching a settlement in this matter. As I indicated to you previously, U.S. EPA believes it is in the best interest of all involved to resolve this matter expeditiously.

U.S. EPA does not agree with your argument that an action to recover our response costs is barred by the statute of limitations; rather, it is our position that Section 113(g)(2) of CERCLA, 42 U.S.C. 9613(g)(2), does not apply to pre-1986 removal actions. I am not aware of the 7th Circuit case which has decided this issue in favor of your position. As I indicated to you during our phone conversation last week, U.S. EPA is prepared to defend these costs in litigation, if necessary.

As we discussed, because of the relatively small amount involved, U.S. EPA would be willing to settle this matter for less than our full response costs, in order to conserve scarce resources. I have enclosed a proposed Administrative Order on Consent, to give you an idea of the type of settlement U.S. EPA would be interested in entering. With regard to your offer of payment of \$7,228.10, as I told you, U.S. EPA cannot consider accepting less than twenty-five percent (25%) of our total response costs.

I apologize for the delay in responding to your offer. Computer problems in our office made us all realize how dependent we have become on these automated machines. Please do not hesitate to contact me at (312) 886-7951 if you have any questions or would like to discuss this matter further. I appreciate your cooperation in this matter and look forward to hearing from you soon.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Elizabeth Doyle".

Elizabeth Doyle  
Assistant Regional Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	U.S. EPA DOCKET NO:
	)	
DEAD CREEK SITE NO. 60	)	ADMINISTRATIVE ORDER
	)	BY CONSENT
	)	
RESPONDENTS:	)	
Monsanto Company	)	RE: REIMBURSEMENT OF
Cerro Copper Products Company	)	RESPONSE COSTS.
Midwest Rubber Reclaiming	)	
Ruan Transportation	)	

JURISDICTION

This Administrative Order on Consent ("Consent Order") is issued pursuant to the authority vested in the President of the United States by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), Pub. L. No. 99-499, 42 U.S.C. 9622(h)(2). The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987) and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-E.

This Administrative Order on Consent is issued to Monsanto Company, Cerro Copper Products Company, Midwest Rubber Reclaiming and Ruan Transportation (hereinafter "Respondents"). The purpose of this Consent Order is for EPA to recover costs incurred at or in connection with the Dead Creek Site No. 60, also known as Dead Creek Segment B, located in Sauget, Illinois, and to resolve the liability of the Respondents for such response costs. Each Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. Each Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order. This Consent Order will be binding upon EPA and shall be binding upon Respondents, their directors, officers, employees, agents, successors and assigns. Each signatory to this Consent Order represents that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party represented by him or her.

STATEMENT OF FACTS

1. Dead Creek Site No. 60, also known as Dead Creek Segment B, is bordered by Judith Lane on the south and Queeney Avenue to the north in Sauget, Illinois (hereinafter "the site").



2. Hazardous substances within the definition of Section 101(14) of CERCLA, 42 U.S.C. 9601(14), have been or are threatened to be released into the environment at or from the site.

3. As a result of the release or threatened release of hazardous substances into the environment, EPA has undertaken response actions at the site under Section 106 of CERCLA, 42 U.S.C. 9606, specifically, installing a chain link fence around the site portion of the Dead Creek, and may require future response actions in the future.

4. In performing this response action, EPA incurred response costs totalling \$49,974.51. Further response costs may be incurred by EPA in the future.

5. An Illinois Environmental Protection Agency report, entitled "A Preliminary Hydrologic Investigation of the Northern Portion of Dead Creek and Vicinity" (St. John, April 1981), indicates that Respondents are responsible for discharges of hazardous substances into the site.

6. EPA and Respondents desire to settle certain claims arising from Respondents involvement with the site without litigation and without admission or adjudication of any issue of fact or law.

#### DETERMINATIONS

Based upon the Findings of Fact set forth above EPA has determined that:

1. Dead Creek Site No. 60, also known as Dead Creek Segment B, is a Facility as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. 9601(9).

2. Each Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. 9601(21).

3. Each Respondent is a responsible party within the meaning of Section 107(a) of CERCLA, 42 U.S.C. 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at or in connection with the site.

4. The past, present or future migration of hazardous substances from the site constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. 9601(22).

#### ORDER

1. Respondents shall pay to the Hazardous Substance Superfund twelve thousand five hundred dollars (\$12,500) within ten days of the effective date of this Consent Order.

2. Such payment shall be made by certified or cashier's check made payable to "EPA-Hazardous Substance Superfund." The check shall reference the name of Respondents and the site, and shall be sent to:

U.S. EPA Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60673

3. Respondents shall simultaneously send a copy of their check to:

Elizabeth Doyle  
Assistant Regional Counsel  
U.S. EPA, Region V (SCS-TUB-4)  
230 South Dearborn  
Chicago, Illinois 60604

4. In addition to any other remedies or sanctions available to EPA, any Respondent who fails or refuses to comply with any term or condition of this Consent Order shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. 9622(h)(3).

5. Subject to Paragraph 6 of this Consent Order, upon payment of the amount specified in Paragraph 1 of this Consent Order, EPA covenants not to sue or to take any other civil or administrative action against Respondents for "Covered Matters." "Covered Matters" shall include any and all civil liability under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), for reimbursement of response costs incurred at or in connection with the site as of October 31, 1989.

6. Nothing in this Consent Order is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against Respondents for:

(a) any continuing liability as a result of failure to make the payments required by Paragraph 1 of this Order; or

(b) any matters not expressly included in Covered Matters, including, without limitation, any liability for damages to natural resources.

7. Nothing in this Consent Order is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Consent Order.

8. EPA and Respondents agree that the actions undertaken by Respondents in accordance with Paragraph 1 of this Consent Order

do not constitute an admission of any liability by any Respondent. Respondents do not admit and retain the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Consent Order, the validity of the Findings of Fact or Determinations contained in this Consent Order.

9. In consideration of EPA's covenant not to sue in Paragraph 5 of this Consent Order, Respondents agree not to assert any claims or causes of action against the United States or the Hazardous Substance Superfund arising out of response activities undertaken at the site, or to seek any other costs, damages, or attorney's fees from the United States, its agencies, employees or contractors arising out of response activities undertaken at the site.

10. Subject to Paragraph 6 of this Consent Order, EPA agrees that by entering into and carrying out the terms of this Consent Order, Respondents will have resolved their liability to the United States for "Covered Matters" pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2), and shall not be liable for claims for "Covered Matters."

11. This Consent Order shall be subject to a thirty-day public comment period pursuant to Section 122(i) of CERCLA, 42 U.S.C. 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. 9622(i)(3), EPA may withdraw its consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper or inadequate.

12. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondents that the public comment period pursuant to Paragraph 11 of this Consent Order has closed and that comments received, if any, do not require modifications of or EPA withdrawal from this Consent Order.

THIS IS NO LONGER AN OFFICIAL DOCUMENT

U.S. Environmental Protection Agency

By:

Valdas V. Adamkus  
U.S. Environmental Protection Agency  
Region V

Date

By:

Date

Title

Company

# Monsanto

LAW DEPARTMENT

Monsanto Company  
800 N. Lindbergh Boulevard  
St. Louis, Missouri 63167  
Phone: (314) 694-1000

June 27, 1990

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Ms. Elizabeth Doyle  
United States Environmental Protection Agency  
Region 5  
230 South Dearborn St.  
Chicago, IL 60604

Re: Dead Creek Site  
Sauget, Illinois Site No. 60

Dear Ms. Doyle:

This letter is in response to the United States Environmental Protection Agency (U.S. EPA) letter dated May 21, 1990 addressing the subject site referenced above. I have forwarded a copy of your letter and the accompanying Administrative Order to each of the parties listed as recipients of the agency's initial December 27, 1989 letter. Following this distribution, I have received either oral or written comment from a majority of the parties involved.

At this time, I am preparing a "red lined" draft of the Administrative Order which addresses, to the extent that they have been received, the parties collective recommendations for additions and deletions. This draft will be submitted to you by July 6, 1990. If you believe that a meeting is necessary, I could meet with you in your office to discuss this matter sometime during the week of July 9-13, 1990. Otherwise, I would be happy to discuss the Administrative Order with you on the telephone. My number in St. Louis is (314) 694-6032. Please call me with your comments and any suggestions you may have on how to proceed from this point.

Sincerely,

*N. Cornell Boggs, III*

N. Cornell Boggs, III  
Environmental Attorney

cc: Paul E. Shorb, III, Esq.  
James L. Stewart, Esq.  
Kenneth Kessler, Esq.

# Monsanto

LAW DEPARTMENT

Monsanto Company  
800 N. Lindbergh Boulevard  
St. Louis, Missouri 63167  
Phone: (314) 694-1000

June 28, 1990

## VIA FEDERAL EXPRESS

Kenneth Kessler, Esq.  
Ruan Transportation  
666 Grand Ave.  
Des Moines, IA 50309

Paul Shorb, Esq.  
Beveridge & Diamond, P.C.  
Suite 700  
1350 I St., N.W. Washington, DC 20005

Jay Stewart, Esq.  
Lowenstein, Sandler, Kohl, Fisher & Boylan  
65 Livingston Ave.  
Roseland, N.J. 07068

Re: Dead Creek Site No. 60  
Administrative Order by Consent  
Redlined Draft

Dear Gentlemen:

Enclosed please find a copy of a "redlined" version of the EPA proposed Administrative Order by Consent for Dead Creek Site No. 60, which I hope has incorporated any concerns that our respective parties may have with the factual statements and other issues posed by the agency in the order. Underlined sections represent deletions while bold sections standing alone represent additions. I plan to submit the "redlined" version to Elizabeth Doyle at Region V no later than July 6. If you have any further suggestions, please inform me as soon as possible. Otherwise, I will submit the "redlined" version, as drafted, to the agency for negotiation.

Please contact me at (314) 694-6032 if you have any comments or questions.

Sincerely,

*N. Cornell Boggs, III*

N. Cornell Boggs, III  
Environmental Attorney

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	U.S. EPA DOCKET NO.
	)	
DEAD CREEK SITE NO. 60	)	ADMINISTRATIVE ORDER
	)	BY CONSENT
	)	
RESPONDENTS:	)	
Monsanto Company	)	RE: REIMBURSEMENT OF
Cerro Copper Products Company	)	RESPONSE COSTS.
Midwest Rubber Reclaiming	)	
Ruan Transportation	)	

JURISDICTION

This Administrative Order on Consent ("Consent Order") is issued pursuant to the authority vested in the President of the United States by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), Pub. L. No. 99-499, 42 U.S.C. 9622(h)(2). The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987) and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-E.

This Administrative Order on Consent is issued to Monsanto Company, Cerro Copper Products Company, Midwest Rubber Reclaiming and Ruan Transportation (hereinafter "Respondents"). The purpose of this Consent Order is for EPA to recover costs incurred at or in connection with the Dead Creek Site No. 60, also known as Dead Creek Segment B, located in Sauget, Illinois, and to resolve the liability of the Respondents for such response costs. Each Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. Each Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order. This Consent Order will be binding upon EPA and shall be binding upon Respondents, their directors, officers, employees, agents, successors and assigns. Each signatory to this Consent Order represents that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party represented by him or her.

STATEMENT OF FACTS

1. Dead Creek Site No. 60, also known as Dead Creek Segment B, is bordered by Judith Lane on the south and Queeny Avenue to the north in Sauget, Illinois (hereinafter "the site").

2. Hazardous substances within the definition of Section 101(4) of CERCLA, 42 U.S.C. 9601(14), have been or are threatened to be released into the environment at or from the site.
3. As a result of the release or threatened release of hazardous substances into the environment, EPA has undertaken response actions at the site under Section 106 of CERCLA, 42 U.S.C. 9606, specifically, installing a chain link fence around the site portion of the Dead Creek, and may require future response actions in the future.
4. In performing this response action, EPA incurred response costs totalling \$49,974.51. Further response costs may be incurred by EPA in the future.
5. An Illinois Environmental Protection Agency report, entitled "A Preliminary Hydrologic Investigation of the Northern Portion of Dead Creek and Vicinity" (St. John, April 1981), indicates that Respondents are responsible for discharges of hazardous substances into the site.
6. EPA and Respondents desire to settle certain claims arising from Respondents involvement with the site without litigation and without admission or adjudication of any issue of fact or law.

#### **EPA FACTUAL DETERMINATIONS**

Based upon the Findings of Fact set forth above EPA has determined that:

1. Dead Creek Site No. 60, also known as Dead Creek Segment B, is a Facility as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. 9601(9).
2. Each Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. 9601(21).
3. Each Respondent is a responsible party within the meaning of Section 107(a) of CERCLA, 42 U.S.C. 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at or in connection with the site.
4. The past, present or future migration of hazardous substances from the site constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. 9601(22).



#### RESPONDENTS POSITION

1. Each Respondent denies any and all findings of fact and determinations reached by the EPA pursuant to this Administrative Order by Consent.
2. Each Respondent denies any and all past and future liability relating to any matter addressed in or covered by this Administrative Order by Consent.
3. Each respondent contends that the EPA has not produced sufficient evidence to support the inference, belief or fact that the EPA has expended \$49,974.51 in response costs at the site.
4. This Order shall not be admitted as evidence in any proceeding with any entity that is not a party to this agreement.

#### ORDER

1. Respondents shall pay to the Hazardous Substance Superfund twelve thousand five hundred dollars (\$12,500) within ten twenty days of the effective date of this Consent order.
2. Such payment shall be made by certified or cashier's check made payable to "EPA-Hazardous Substance Superfund." The check shall reference the name of Respondents and the site, and shall be sent to:

U.S. EPA Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60673

3. Respondents shall simultaneously send a photostatic copy of their check to:

Elizabeth Doyle  
Assistant Regional Counsel  
U.S. EPA, Region V (5CS-TUB-4)  
230 South Dearborn  
Chicago, Illinois 60604

4. In addition to any other remedies or sanctions available to EPA, any Respondent who fails or refuses, without just cause and reasonable notice to the EPA, to comply with any term or condition of this Consent Order shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. 9622(h)(3).

5. Subject to Paragraph 6 of this Consent Order, upon payment of the amount specified in Paragraph 1 of this Consent Order, EPA covenants not to sue or to take any other civil or administrative action against Respondents for "Covered Matters." "Covered Matters" shall include any and all civil liability under Section 207(a) of CERCLA, 42 U.S.C. 9607(a), for reimbursement of response costs incurred at or in connection with the site as of October 31, 1989 July 15, 1990.
6. Nothing in this Consent Order is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against Respondents for:
  - (a) any continuing liability as a result of failure to make the payments required by Paragraph 1 of this Order; or
  - (b) any matters not expressly included in Covered Matters, including, without limitation, any liability for damages to natural resources.
7. Nothing in this Consent Order is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Consent Order.
8. EPA and Respondents agree that the actions undertaken by Respondents signing this Administrative Order by Consent and the payment of the amount required in accordance with Paragraph 1 of this Consent Order do not constitute an admission of any liability by any Respondent . and shall not be considered an admission of liability for any purpose. Specifically, Respondents do not admit and retain the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Consent Order, the validity of the USEPA Findings of Fact or and Determinations contained in this Consent Order.
9. In consideration of EPA's covenant not to sue in Paragraph 5 of this Consent Order, Respondents agree not to assert any claims or causes of action against the United States or the Hazardous Substance Superfund arising out of response activities undertaken at the site "Covered Matters" as defined in Paragraph 5 above, or to seek any other costs, damages, or attorney's fees from the United States, its agencies, employees or contractors arising out of response activities undertaken at the site such Covered Matters.

10. Subject to Paragraph 6 of this Consent Order, EPA agrees that by entering into and carrying out the terms of this Consent Order, Respondents will have resolved their liability to the United States for "Covered Matters" pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2), and shall not be liable for claims for "Covered Matters."
11. This Consent Order shall be subject to a thirty-day public comment period pursuant to Section 122(i) of CERCLA, 42 U.S.C. 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. 9622(8)(3), EPA may withdraw its consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper or inadequate. In the event the USEPA does withdraw its consent to this Administrative Order, all findings, determinations, statements, and any other effect of this order shall be deemed null and void.
12. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondents that the public comment period pursuant to Paragraph 11 of this Consent Order has closed and that comments received, if any, do not require modifications of or EPA withdrawal from this Consent Order. The time limitations addressed in paragraph 1 of the "Order" section shall not begin to toll for each Respondent until each has received, as evidenced by Certified Mail, a copy of the Administrative Order by Consent.

IT IS SO AGREED AND ORDERED:

U.S. Environmental Protection Agency

By: \_\_\_\_\_  
Valdas V. Adamkus  
U.S. Environmental Protection  
Agency v.

\_\_\_\_\_  
Date

By: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

# Monsanto

LAW DEPARTMENT

Monsanto Company  
800 N. Lindbergh Boulevard  
St. Louis, Missouri 63167  
Phone: (314) 694-1000

July 5, 1990

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Ms. Elizabeth Doyle  
United States Environmental Protection Agency  
Region 5  
230 South Dearborn Street  
Chicago, IL 60604

Re: Dead Creek Site  
Sauget, Illinois Site No. 60

Dear Ms. Doyle:

This letter is in response to the United States Environmental Protection Agency (U.S. EPA) letter dated May 21, 1990, addressing the subject site referenced above. Attached is the "red lined" draft that I have prepared which represents, to the extent that they were received, the parties' collective recommendations for additions and deletions to the language in the Administrative Order. The proposed additions have been marked through bold type, while the proposed deletions are underlined in bold.

I propose that we meet at your office on Friday, July 20, 1990, to negotiate the final version of this Administrative Order. My telephone number in St. Louis is (314) 694-6032. Please call me with your suggestions or thoughts on my proposal for a meeting.

Sincerely,

*N. Cornell Boggs, III*

N. Cornell Boggs, III  
Environmental Attorney

Attachment

cc (w/o att): Paul E. Shorb, III, Esq.  
James L. Stewart, Esq.  
Kenneth Kessler, Esq. ✓

RUAN  
TRANSPORT  
CORPORATION

3200 RUAN CENTER  
666 GRAND AVENUE  
DES MOINES, IOWA  
50309  
515-245-2500

August 15, 1990

Elizabeth Doyle  
Assistant Regional Counsel  
U.S. EPA, Region V (5CS-TUB-4)  
230 South Dearborn  
Chicago, IL 60604

Re: Dead Creek Site No. 60  
Administrative Order by Consent

Dear Ms. Doyle:

Enclosed please find the signature page executed on behalf  
of Ruan Transport Corporation pertaining to the above  
referenced matter.

Sincerely,

RUAN TRANSPORT CORPORATION

  
Kenneth L. Kessler, Esq.

pb

Enclosure

cc: N. Cornell Boggs, III, Esq.  
Paul E. Shorb, III, Esq.  
James L. Stewart, Esq.

# Monsanto

LAW DEPARTMENT

Monsanto Company  
800 N. Lindbergh Boulevard  
St. Louis, Missouri 63167  
Phone: (314) 694-1000

August 8, 1990

## VIA FEDERAL EXPRESS

Kenneth Kessler, Esq.  
Ruan Transportation  
666 Grand Ave.  
Des Moines, IA 50309

Paul E. Shorb, III, Esq.  
Beveridge & Diamond, P.C.  
Suite 700  
1350 I St., N.W. Washington, DC 20005

James L. Stewart, Esq.  
Lowenstein, Sandler, Kohl, Fisher & Boylan  
65 Livingston Ave.  
Roseland, NJ 07068

Re: Dead Creek Site No. 60  
Administrative Order by Consent

Gentlemen:

The EPA Assistant Regional Counsel assigned to Dead Creek Site No. 60, Elizabeth Doyle, telephoned this morning to inform me that she was agreeable to the terms of the attached Administrative Order by Consent. The next step is for each party to submit signature pages to Ms. Doyle at the address listed in the "Order" section at paragraph 3 on page 3. Doyle does not foresee any problems in having Mr. Adamus sign off on the Order, which is subject to a notice and comment period.

Please contact me at (314) 694-6032 if you have any comments or questions.

Sincerely,

*N. Cornell Boggs, III*

N. Cornell Boggs, III  
Environmental Attorney

NCB/tap

attachment

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	U.S. EPA DOCKET NO.
	)	
DEAD CREEK SITE NO. 60	)	ADMINISTRATIVE ORDER
	)	BY CONSENT
	)	
RESPONDENTS:	)	
Monsanto Company	)	RE: REIMBURSEMENT OF
Cerro Copper Products Company	)	RESPONSE COSTS.
Midwest Rubber Reclaiming	)	
Ruan Transportation	)	

JURISDICTION

This Administrative Order on Consent ("Consent Order") is issued pursuant to the authority vested in the President of the United States by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), Pub. L. No. 99-499, 42 U.S.C. 9622(h)(2). The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987) and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-E.

This Administrative Order on Consent is issued to Monsanto Company, Cerro Copper Products Company, Midwest Rubber Reclaiming and Ruan Transportation (hereinafter "Respondents"). The purpose of this Consent Order is for EPA to recover costs incurred at or in connection with the Dead Creek Site No. 60, also known as Dead Creek Segment B, located in Sauget, Illinois, and to resolve the liability of the Respondents for such response costs. Each Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. Each Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order. This Consent Order will be binding upon EPA and shall be binding upon Respondents, their directors, officers, employees, agents, successors and assigns. Each signatory to this Consent Order represents that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party represented by him or her.

STATEMENT OF FACTS

1. Dead Creek Site No. 60, also known as Dead Creek Segment B, is bordered by Judith Lane on the south and Queeny Avenue to the north in Sauget, Illinois (hereinafter "the site").



2. Hazardous substances within the definition of Section 101(14) of CERCLA, 42 U.S.C. 9601(14), have been or are threatened to be released into the environment at or from the site.
3. As a result of the release or threatened release of hazardous substances into the environment, EPA has undertaken response actions at the site under Section 106 of CERCLA, 42 U.S.C. 9606, specifically, installing a chain link fence around the site portion of the Dead Creek, and may require future response actions.
4. In performing this response action, EPA incurred response costs totalling \$49,974.51. Further response costs may be incurred by EPA in the future.
5. The Illinois Environmental Protection Agency has indicated to U.S. EPA that Respondents are responsible for discharges of hazardous substances into the site.
6. EPA and Respondents desire to settle certain claims arising from Respondents' involvement with the site without litigation and without admission or adjudication of any issue of fact or law.

#### EPA DETERMINATIONS

Based upon the Findings of Fact set forth above EPA has determined that:

1. Dead Creek Site No. 60, also known as Dead Creek Segment B, is a Facility as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. 9601(9).
2. Each Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. 9601(21).
3. Each Respondent is a responsible party within the meaning of Section 107(a) of CERCLA, 42 U.S.C. 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at or in connection with the site.
4. The past, present or future migration of hazardous substances from the site constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. 9601(22).

#### RESPONDENTS POSITION

1. The consent of the Respondents to the terms of this Order shall not constitute or be construed as an admission of any

past or future liability or of U.S. EPA's Statement of Facts or Determinations.

2. This Order is not intended for the benefit of any third party and may not be enforced by any third party.

ORDER

1. Respondents shall pay to the Hazardous Substance Superfund twelve thousand five hundred dollars (\$12,500) within twenty days of the effective date of this Consent order.
2. Such payment shall be made by certified or cashier's check made payable to "EPA-Hazardous Substance Superfund." The check shall reference the name of Respondents and the site, and shall be sent to:

U.S. EPA Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60673

3. Within twenty days of the effective date of this Order, Respondents shall send a photostatic copy of their check to:

Elizabeth Doyle  
Assistant Regional Counsel  
U.S. EPA, Region V (5CS-TUB-4)  
230 South Dearborn  
Chicago, Illinois 60604

4. In addition to any other remedies or sanctions available to EPA, any Respondent who fails or refuses to comply with any term or condition of this Consent Order shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. 9622(h)(3).
5. Subject to Paragraph 6 of this Consent Order, upon payment of the amount specified in Paragraph 1 of this Consent Order, EPA covenants not to sue or to take any other civil or administrative action against Respondents for "Covered Matters." "Covered Matters" shall include any and all civil liability under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), for reimbursement of response costs incurred at or in connection with the site as of August 30, 1990.
6. Nothing in this Consent Order is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against Respondents for:

- (a) any continuing liability as a result of failure to make the payments required by Paragraph 1 of this Order; or
  - (b) any matters not expressly included in Covered Matters, including, without limitation, any liability for damages to natural resources.
7. Nothing in this Consent Order is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Consent Order.
8. EPA and Respondents agree that Respondents signing this Administrative Order by Consent and the payment of the amount required in accordance with Paragraph 1 of this Consent Order does not constitute an admission of any liability by any Respondent and shall not be considered an admission of liability for any purpose. Specifically, Respondents do not admit and retain the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Consent Order, the validity of the USEPA Findings of Fact and Determinations contained in this Consent Order.
9. In consideration of EPA's covenant not to sue in Paragraph 5 of this Consent Order, Respondents agree not to assert any claims or causes of action against the United States or the Hazardous Substance Superfund arising out of the EPA activities in installing a chainlink fence around the site portion of Dead Creek as defined in Paragraph 5 above, or to seek any other costs, damages, or attorney's fees from the United States, its agencies, employees or contractors arising out of such chainlink fence installation activities.
10. Subject to Paragraph 6 of this Consent Order, EPA agrees that by entering into and carrying out the terms of this Consent Order, Respondents will have resolved their liability to the United States for "Covered Matters" pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2), and shall not be liable for claims for "Covered Matters."
11. This Consent Order shall be subject to a thirty-day public comment period pursuant to Section 122(i) of CERCLA, 42 U.S.C. 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. 9622(8)(3), EPA may withdraw its consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper or inadequate. In the event the USEPA does withdraw its consent to this Administrative

12. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondents that the public comment period pursuant to Paragraph 11 of this Consent Order has closed and that comments received, if any, do not require modifications of or EPA withdrawal from this Consent Order. The time limitations addressed in paragraph 1 of the "Order" section shall not begin to run for each Respondent until each has received, as evidenced by Certified Mail, a copy of the signed Administrative Order by Consent.

IT IS SO AGREED AND ORDERED:

U.S. Environmental Protection Agency

**By:**

Valdas V. Adamkus  
U.S. Environmental Protection  
Agency v.

**Date**

By:

Robert M. Munnell

8/15/90  
Date

Date \_\_\_\_\_

Treasure  
Title

Title

Ruan Transport Corporation  
Company

**Company**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
230 SOUTH DEARBORN ST.  
CHICAGO, ILLINOIS 60604

August 8, 1990

REPLY TO ATTENTION OF:

N. Cornell Boggs, III  
Environmental Attorney  
Monsanto Company  
800 N. Lindbergh Boulevard  
St. Louis, Missouri 63167

Re: Dead Creek Site No. 60  
Sauget, Illinois

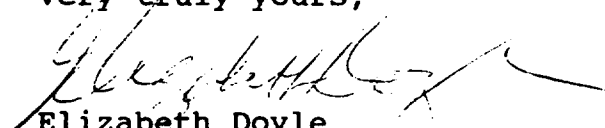
Dear Mr. Boggs:

This is to confirm our conversation of this morning, in which we agreed that you will circulate the Administrative Order by Consent for the above referenced site, as modified during our discussions, to the named Respondents for their signature. Upon receipt of this signed copy, I will put the document into final sign-off within the United States Environmental Protection Agency (U.S. EPA). As you know, the public will have thirty days to comment before the Order becomes effective.

You also agreed to send me addresses for each of the Respondents. I will need this information in order to send each Respondent a copy of the Order signed by the Regional Administrator.

Thank you for your cooperation in this matter. If you encounter any difficulties or would like to discuss this matter, please do not hesitate to contact me at (312) 886-7951.

Very truly yours,



Elizabeth Doyle  
Assistant Regional Counsel

# LOWENSTEIN, SANDLER, KOHL, FISHER & BOYLAN

A PROFESSIONAL CORPORATION

COUNSELLORS AT LAW  
65 LIVINGSTON AVENUE  
ROSELAND, NEW JERSEY

07068-1791

TELEPHONE (201) 992-8700

FACSIMILE (201) 992-5820

SOMERVILLE OFFICE

TELEPHONE (201) 526-3300

ALAN V. LOWENSTEIN  
RICHARD M. SANDLER  
BENEDICT M. KOHL  
ARNOLD FISHER  
JOSEPH LEVOW STEINBERG  
MATTHEW P. BOYLAN  
BRUCE D. SHOULSON  
JOHN R. MACKAY 2ND  
MARTIN R. GOODMAN  
JOHN D. SCHUPPER  
STEPHEN N. DERMER  
MICHAEL L. RODBURG  
ALLEN B. LEVITHAN  
R. BARRY STIGER  
GREGORY B. REILLY  
PETER H. EHRENBURG  
HOWARD S. DENBURG  
STEVEN B. FUERST  
THEODORE V. WELLS, JR.

WILLIAM S. KATCHEN  
MICHAEL DORE  
GERALD KROVATIN  
RICHARD D. WILKINSON  
ALAN WOVSANIKER  
KENNETH J. SLUTSKY  
DAVID L. HARRIS  
ZULIMA V. FARBER  
WILLIAM P. MUNDAY  
COLLEEN P. KELLY  
DANIEL J. BARKIN  
GEORGE J. MAZIN  
JAMES STEWART  
ROBERT L. KRAKOWER  
KEITH H. ANSBACHER  
LAURA R. KUNTZ  
ROBERT D. CHESLER  
RICHARD F. RICCI

RICHARD P. BOEHMER  
NORMAN W. SPINDEL  
OF COUNSEL

LEE HILLES WERTHEIM  
STUART S. YUSEM  
KEVIN KOVACS  
JOHN L. BERGER  
PHYLLIS F. PASTERNAK  
RICHARD NIEMIEC  
MARY-LYNNE RICIGLIANO  
LUCINDA P. LONG  
STEPHEN H. SKOLLER  
DAVID W. FIELD  
MARY JO REICH  
ANN P. OSTERDALE  
MARTHA L. LESTER  
LINDA PICKERING  
MICHAEL O'B. BOLDT  
BETH ANN WILANSKY  
BONNIE K. LEVITT  
MICHAEL D. SCOTT  
ROCHELLE B. GALIBER  
SOLON L. KANDEL  
PAUL C. PAWLOWSKI  
DENNIS F. GLEASON  
ANTHONY J. REITANO, JR.  
HOWARD A. TEICHMAN  
ROBERT G. MINION  
KAREN GAYNOR KILLEEN  
M. ANNE CONLEY-PITCHELL  
JEFFREY J. WILD  
LEON S. SEGEN  
TERRY E. THORNTON  
ALEXANDER J. KOVACS  
CONSTANCE J. ALEXANDER  
MARIA A. DANTAS  
ARTHUR H. SIEWITZ  
DAVID S. WOLIN  
DOLORES M. BLACKBURN

GEORGIA A. McMILLEN  
MARC E. KRAMER  
JOHN F. DELANEY  
SCOTT E. RATHER  
LYNNE S. SCHERTZ  
PATRICK J. CONLON  
SAMUEL ROSENBERG  
JOHN M. NOLAN  
GARY M. WINGENS  
CHRISTINE RANIERI SMITH  
MARJORIE E. KLEIN  
IVAN M. BARON  
VIVIAN D. LAGER  
SUNIL K. GARG  
GAIL E. KIOUES  
EILEEN M. CLARK  
MONICA C. BARRETT  
BRIAN M. ENGLISH  
RICHARD P. SHAPIRO  
NANCY LAKE MARTIN\*\*\*  
ALLEN P. LANGJAHN\*\*\*  
JOHN B. MCCUSKER\*  
JAYNE A. PRITCHARD  
MIRIAM KAHAN BRODY  
GWEN J. LOURIE  
DARRYL EVERETT GUGIG  
SAMUEL B. SANTO, JR.  
JONATHAN T. K. COHEN  
CRAIG M. LESSNER  
SUSAN L. YODOVIN  
PAUL F. CARVELLI  
JAY A. SOLED  
SUSAN E. WAELBROECK\*\*  
ADAM L. GANS  
KAREN E. TRAEGER\*

\*N.Y. BAR ONLY  
\*\*TEXAS BAR ONLY  
\*\*\*CA. BAR ONLY  
\*\*\*\*FL. BAR ONLY

August 21, 1990

VIA FEDERAL EXPRESS

Elizabeth Doyle, Esq.  
Assistant Regional Counsel  
USEPA Region V  
(5CS-2UB-4)  
230 South Dearborne Street  
Chicago, IL 60604

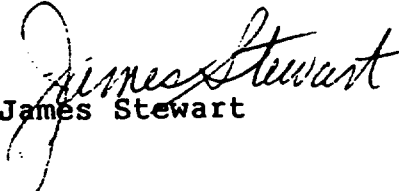
Re: Dead Creek Site No. 60  
Administrative Order by Consent

Dear Ms. Doyle:

I enclose the executed signature page on behalf  
of Cerro Copper Products Co. in the above matter.

Kindly provide me with a copy of the signature  
page when executed by USEPA.

Very truly yours,

  
James Stewart

JS:her  
Enclosure

cc: N. Cornell Boggs, Esq.  
Kenneth L. Kessler, Esq.

082190M559/M2377-3

Order, all findings, determinations, statements, and any other effect of this Order shall be deemed null and void.

12. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondents that the public comment period pursuant to Paragraph 11 of this Consent Order has closed and that comments received, if any, do not require modifications of or EPA withdrawal from this Consent Order. The time limitations addressed in paragraph 1 of the "Order" section shall not begin to run for each Respondent until each has received, as evidenced by Certified Mail, a copy of the signed Administrative Order by Consent.

IT IS SO AGREED AND ORDERED:

U.S. Environmental Protection Agency

By: Valdas V. Adamkus  
U.S. Environmental Protection  
Agency v.

Date

By:   
Paul Tandler

August 13, 1990

Date

Vice President

Title

CERRO COPPER PRODUCTS CO.

Company



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
230 SOUTH DEARBORN ST.  
CHICAGO, ILLINOIS 60604

DEC 20 1990

REPLY TO ATTENTION OF:

BY CERTIFIED MAIL

N. Cornell Boggs, III  
Environmental Attorney  
Monsanto Company  
800 N. Lindbergh E2NP  
St. Louis, MO 63167

Kenneth Kessler  
Ruan Transportation  
666 Grand Avenue  
Des Moines, IA 50309

James Stewart  
Lowenstein, Sandler, Kohl,  
Fisher & Boylan  
65 Livingston Avenue  
Roseland, NJ 07068

Paul E. Shorb, III  
Beveridge & Diamond, P.C.  
13501 I Street, N.W.  
Suite 700  
Washington, D.C. 20005

Re: Dead Creek Site No. 60

Gentlemen:

As required by paragraph 12 of the Administrative Order on Consent for the Dead Creek Site No. 60, I am sending you each a copy of the signed Order. The public comment period closed on December 14, 1990, and U.S. EPA received no comments which would indicate that the Consent Order is inappropriate, improper or inadequate. Therefore, pursuant to the terms of the Consent Order, your payment is due to U.S. EPA within twenty days of your receipt of this letter.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Elizabeth Doyle", written over the typed name.

Elizabeth Doyle  
Assistant Regional Counsel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**IN THE MATTER OF:**

DEAD CREEK SITE NO. 60

## RESPONDENTS:

**Monsanto Company**  
**Cerro Copper Products Company**  
**Midwest Rubber Reclaiming**  
**Ruan Transportation**

U.S. EPA DOCKET NO.

**ADMINISTRATIVE ORDER  
BY CONSENT**

**RE: REIMBURSEMENT OF  
RESPONSE COSTS.**

## JURISDICTION

This Administrative Order on Consent ("Consent Order") is issued pursuant to the authority vested in the President of the United States by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), Pub. L. No. 99-499, 42 U.S.C. 9622(h)(2). The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987) and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-E.

This Administrative Order on Consent is issued to Monsanto Company, Cerro Copper Products Company, Midwest Rubber Reclaiming and Ruan Transportation (hereinafter "Respondents"). The purpose of this Consent Order is for EPA to recover costs incurred at or in connection with the Dead Creek Site No. 60, also known as Dead Creek Segment B, located in Sauget, Illinois, and to resolve the liability of the Respondents for such response costs. Each Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. Each Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order. This Consent Order will be binding upon EPA and shall be binding upon Respondents, their directors, officers, employees, agents, successors and assigns. Each signatory to this Consent Order represents that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party represented by him or her.

## STATEMENT OF FACTS

1. Dead Creek Site No. 60, also known as Dead Creek Segment B, is bordered by Judith Lane on the south and Queeny Avenue to the north in Sauget, Illinois (hereinafter "the site").

2. Hazardous substances within the definition of Section 101(14) of CERCLA, 42 U.S.C. 9601(14), have been or are threatened to be released into the environment at or from the site.
3. As a result of the release or threatened release of hazardous substances into the environment, EPA has undertaken response actions at the site under Section 106 of CERCLA, 42 U.S.C. 9606, specifically, installing a chain link fence around the site portion of the Dead Creek, and may require future response actions.
4. In performing this response action, EPA incurred response costs totalling \$49,974.51. Further response costs may be incurred by EPA in the future.
5. The Illinois Environmental Protection Agency has indicated to U.S. EPA that Respondents are responsible for discharges of hazardous substances into the site.
6. EPA and Respondents desire to settle certain claims arising from Respondents' involvement with the site without litigation and without admission or adjudication of any issue of fact or law.

#### EPA DETERMINATIONS

Based upon the Findings of Fact set forth above EPA has determined that:

1. Dead Creek Site No. 60, also known as Dead Creek Segment B, is a Facility as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. 9601(9).
2. Each Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. 9601(21).
3. Each Respondent is a responsible party within the meaning of Section 107(a) of CERCLA, 42 U.S.C. 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at or in connection with the site.
4. The past, present or future migration of hazardous substances from the site constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. 9601(22).

#### RESPONDENTS POSITION

1. The consent of the Respondents to the terms of this Order shall not constitute or be construed as an admission of any

past or future liability or of U.S. EPA's Statement of Facts or Determinations.

2. This Order is not intended for the benefit of any third party and may not be enforced by any third party.

ORDER

1. Respondents shall pay to the Hazardous Substance Superfund twelve thousand five hundred dollars (\$12,500) within twenty days of the effective date of this Consent order.
2. Such payment shall be made by certified or cashier's check made payable to "EPA-Hazardous Substance Superfund." The check shall reference the name of Respondents and the site, and shall be sent to:

U.S. EPA Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60673

3. Within twenty days of the effective date of this Order, Respondents shall send a photostatic copy of their check to:

Elizabeth Doyle  
Assistant Regional Counsel  
U.S. EPA, Region V (5CS-TUB-4)  
230 South Dearborn  
Chicago, Illinois 60604

4. In addition to any other remedies or sanctions available to EPA, any Respondent who fails or refuses to comply with any term or condition of this Consent Order shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. 9622(h)(3).
5. Subject to Paragraph 6 of this Consent Order, upon payment of the amount specified in Paragraph 1 of this Consent Order, EPA covenants not to sue or to take any other civil or administrative action against Respondents for "Covered Matters." "Covered Matters" shall include any and all civil liability under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), for reimbursement of response costs incurred at or in connection with the site as of August 30, 1990.
6. Nothing in this Consent Order is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against Respondents for:

- (a) any continuing liability as a result of failure to make the payments required by Paragraph 1 of this Order; or
  - (b) any matters not expressly included in Covered Matters, including, without limitation, any liability for damages to natural resources.
7. Nothing in this Consent Order is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Consent Order.
8. EPA and Respondents agree that Respondents signing this Administrative Order by Consent and the payment of the amount required in accordance with Paragraph 1 of this Consent Order does not constitute an admission of any liability by any Respondent and shall not be considered an admission of liability for any purpose. Specifically, Respondents do not admit and retain the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Consent Order, the validity of the USEPA Findings of Fact and Determinations contained in this Consent Order.
9. In consideration of EPA's covenant not to sue in Paragraph 5 of this Consent Order, Respondents agree not to assert any claims or causes of action against the United States or the Hazardous Substance Superfund arising out of the EPA activities in installing a chainlink fence around the site portion of Dead Creek as defined in Paragraph 5 above, or to seek any other costs, damages, or attorney's fees from the United States, its agencies, employees or contractors arising out of such chainlink fence installation activities.
10. Subject to Paragraph 6 of this Consent Order, EPA agrees that by entering into and carrying out the terms of this Consent Order, Respondents will have resolved their liability to the United States for "Covered Matters" pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2), and shall not be liable for claims for "Covered Matters."
11. This Consent Order shall be subject to a thirty-day public comment period pursuant to Section 122(i) of CERCLA, 42 U.S.C. 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. 9622(8)(3), EPA may withdraw its consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper or inadequate. In the event the USEPA does withdraw its consent to this Administrative

Order, all findings, determinations, statements, and any other effect of this Order shall be deemed null and void.

12. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondents that the public comment period pursuant to Paragraph 11 of this Consent Order has closed and that comments received, if any, do not require modifications of or EPA withdrawal from this Consent Order. The time limitations addressed in paragraph 1 of the "Order" section shall not begin to run for each Respondent until each has received, as evidenced by Certified Mail, a copy of the signed Administrative Order by Consent.

IT IS SO AGREED AND ORDERED:

U.S. Environmental Protection Agency

By:

Valdas V. Adamkus  
Valdas V. Adamkus  
U.S. Environmental Protection  
Agency v.

September 27, 1990  
Date

By:

Warren L. Smull  
Warren L. Smull

August 9, 1990  
Date

Manager, Remedial Projects  
Title

Monsanto Company  
Company

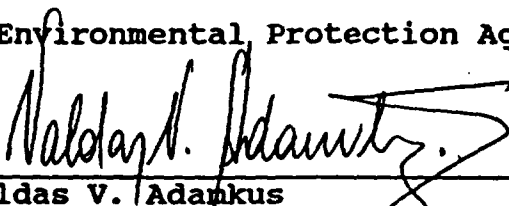
Order, all findings, determinations, statements, and any other effect of this Order shall be deemed null and void.

12. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondents that the public comment period pursuant to Paragraph 11 of this Consent Order has closed and that comments received, if any, do not require modifications of or EPA withdrawal from this Consent Order. The time limitations addressed in paragraph 1 of the "Order" section shall not begin to run for each Respondent until each has received, as evidenced by Certified Mail, a copy of the signed Administrative Order by Consent.

IT IS SO AGREED AND ORDERED:

U.S. Environmental Protection Agency

By:

  
Valdas V. Adamkus  
U.S. Environmental Protection  
Agency v.

September 27, 1990  
Date

By:

  
Paul Tandler

August 13, 1990

Date

Vice President

Title

CERRO COPPER PRODUCTS CO.

Company

Order, all findings, determinations, statements, and any other effect of this Order shall be deemed null and void.

12. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondents that the public comment period pursuant to Paragraph 11 of this Consent Order has closed and that comments received, if any, do not require modifications of or EPA withdrawal from this Consent Order. The time limitations addressed in paragraph 1 of the "Order" section shall not begin to run for each Respondent until each has received, as evidenced by Certified Mail, a copy of the signed Administrative Order by Consent.

IT IS SO AGREED AND ORDERED:

U.S. Environmental Protection Agency

By:

Valdas V. Adamkus  
U.S. Environmental Protection  
Agency v.

September 27, 1990  
Date

By:

Treasurer  
Title

Ruan Transport Corporation  
Company

8/15/90  
Date

Order, all findings, determinations, statements, and any other effect of this Order shall be deemed null and void.

12. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondents that the public comment period pursuant to Paragraph 11 of this Consent Order has closed and that comments received, if any, do not require modifications of or EPA withdrawal from this Consent Order. The time limitations addressed in paragraph 1 of the "Order" section shall not begin to run for each Respondent until each has received, as evidenced by Certified Mail, a copy of the signed Administrative Order by Consent.

IT IS SO AGREED AND ORDERED:

U.S. Environmental Protection Agency

By: *Valdas V. Adankus*

Valdas V. Adankus  
U.S. Environmental Protection  
Agency v.

*September 27, 1990*  
Date

By: *Howard J. Drake*

*U.P. & G.M.*  
Title

*Midwest Rubber Reclaiming Div.*  
Company

*A Div. of Empire Chem Inc.*

*8/17/90*  
Date



RUAN  
TRANSPORT  
CORPORATION

December 27, 1990

U.S. EPA Superfund Accounting  
P.O. Box 70753  
Chicago, IL 60673

3200 RUAN CENTER  
666 GRAND AVENUE  
DES MOINES, IOWA  
50309  
515-245-2500

RE: Dead Creek Site No. 60

Gentlemen:

Enclosed please find Ruan Transport Corporation's remittance in the amount of \$3,125.00 representing our share of the reimbursement of response costs as set forth in the Administrative Order by Consent in the matter of Dead Creek Site No. 60.

RUAN TRANSPORT CORPORATION



Kenneth L. Kessler  
Director of Legal Services

lg  
Enclosure

cc: Other Respondents  
Elizabeth Doyle - U.S. EPA  
Region V

REMITTER



831798

RUAN

PAY TO THE ORDER OF EPA - HAZARDOUS SUBSTANCE SUPERFUND

DECEMBER 26 19 90

33-64-730

BANKERS TRUST COMPANY 3,125 dol's 00 cts

\$ \*3,125.00\*

DOLLARS

CASHIER'S CHECK

*Cathy Cochran*

⑈831798⑈ ⑆073000642⑆ 80 001 5⑈

J-737 (11-83)

REQUEST FOR CHECK

*Certified or  
cashier's check*

X Ruan Transport Corp.  
Ruan Leasing Company  
Trans. Supply Corp.

Arizona Tank Lines  
Yellow Cab Company  
Ruan Cab Company

TO: ACCOUNTS PAYABLE

DATE: 12/24/90

% Allocation

100%

Company Name

Ruan Transport Corp.

I HEREBY REQUEST APPROVAL OF CHECK PAYABLE TO:

Name EPA-Hazardous Substance Superfund Amount \$3,125.00

Address P.O. Box 70753

Purpose Settlement of EPA claim

City-State-Zip Chicago IL 60673

Check to be mailed? YES ☒ NO

Route check to Ken Kessler

Requested By \_\_\_\_\_

Ken Kessler  
Manager Authorization



CERRO COPPER PRODUCTS CO.

P.O. Box 66800  
St. Louis, MO 63166-6800  
618/337-6000

January 7, 1991

CERTIFIED MAIL

U. S. EPA Superfund Accounting  
P. O. Box 70753  
Chicago, IL 60673

RE: Dead Creek Site No. 60

Gentlemen:

We enclose our cashier's check for \$3,125 as Cerro Copper Product Co.'s share of the reimbursement of response costs incurred by the U.S.EPA in conjunction with the subject site.

We understand that the other respondents (Monsanto Company, Midwest Rubber Reclaiming, Ruan Transportation) each have or will remit the same sum in settlement of the Administrative Order by Consent signed in behalf of the U.S.EPA on September 27, 1990, totalling \$12,500.

A copy of this letter is being distributed to each respondent via their counsel, and a photostatic copy of the check is being sent to Ms. Elizabeth Doyle, Assistant Regional Council, U.S.EPA, Region V, as ordered in the Decree.

Yours very truly,

CERRO COPPER PRODUCTS CO.

A handwritten signature in dark ink, appearing to read "Paul Tandler", is written over the company name.

Paul Tandler  
Vice President

PT/ge

Enclosure

cc: Ms. Elizabeth Doyle, U.S.EPA (w/encl.)  
James Stewart (for Cerro Copper Products Co.)  
N. Cornell Boggs, III (for Monsanto Company)  
Kenneth Kessler (for Ruan Transportation)  
Paul E. Shorb, III (for Midwest Rubber Reclaiming)  
File



A member of The Marmon Group of companies

*Executive Offices*

300 PLAZA DRIVE  
BINGHAMTON, NEW YORK 13903  
(AREA 607) 729-9331

CERTIFIED RETURN RECEIPT REQUESTED

January 4, 1991

U.S. EPA Superfund Accounting  
P.O. Box 70753  
Chicago, IL 60673

RE: Dead Creek Site No. 60

Dear Sir/Madam:

Enclosed please find a check for \$3,125.00 as payment from the Midwest Rubber Reclaiming Division of Empire Chem, Inc. pursuant to the Administrative order By Consent regarding Dead Creek Site No. 60.

Sincerely yours,

  
Charles J. Barrett

Check Enclosed

cc: Elizabeth Doyle,  
USEPA Region v (w/encl.)

Other Respondents (w/o encl.)

N. Cornell Boggs, III  
Monsanto Company

Kenneth Kessler  
Ruan Transportation

James Stewart  
Lowenstein, Sandler, Kohl, Fisher & Boylan  
Attorney for Cerro Copper Products Company

Paul E. Shorb, III  
Beveridge & Diamond, P.C.  
Attorney for Midwest Rubber Reclaiming

41  
copy to →  
5/1/91



# Monsanto

Monsanto Chemical Company  
W. G. Krummrich Plant  
500 Monsanto Ave.  
Sauget, Illinois 62206-1198  
Phone: (618) 271-5835

August 1, 1990

Kenneth Kessler  
P.O. Box 855  
Des Moines, Iowa 50304

Dear Mr. Kessler:

Per our 7/31 discussion attached are two identical Access Agreements to allow Monsanto and its contractors access to property owned along Dead Creek between Judith Lane and Queeny Avenue. They are unchanged from the one I sent to you on July 9th.

Please sign both and return one to me at the above address.

Sincerely,

Max W. McCombs  
General Superintendent  
Government and Environmental Affairs

/sdg  
Attach.

**RUAN  
TRANSPORT  
CORPORATION**

**August 22, 1990**

**Max W. McCombs  
General Superintendent  
Monsanto Chemical Company  
W. G. Krummrich Plant  
500 Monsanto Ave.  
Sauget, IL 62206-1198**

**3200 RUAN CENTER  
666 GRAND AVENUE  
DES MOINES, IOWA  
50309  
515-245-2500**

**Dear Mr. McCombs:**

**Enclosed please find the executed Access Agreement permitting access to the  
Dead Creek area.**

**We have retained a copy for our files.**

**If there is anything else you need, please advise.**

**Sincerely,**

**RUAN TRANSPORT CORPORATION**



**Kenneth L. Kessler  
Corporate Counsel**

**pb**

**Enclosures**

## ACCESS AGREEMENT

This Agreement is made as of the 1 day of August, 1990 between RUAN TRANSPORT CO., a land owner in St. Clair County, Illinois, and Monsanto Chemical Company, a unit of Monsanto Company, whose principal offices are located at 800 North Lindbergh Boulevard, St. Louis Missouri 63167.

WHEREAS, Monsanto has requested permission to enter upon the property of the above-listed owner at the address listed above to perform certain tests and take samples of the material at areas in and around Dead Creek; and

WHEREAS, RUAN TRANSPORT CO., is willing to grant Monsanto a revocable license for the purpose aforesaid.

NOW, THEREFORE, in consideration of and conditioned upon the mutual covenants, promises and agreements stated herein, the parties agree as follows:

1. RUAN TRANSPORT CO., hereby grants to Monsanto a revocable license to enter upon real property owned by RUAN TRANSPORT CO. located at locator number 1-35-200-005, 1-35-200-013 for the purpose of sampling areas in and around Dead Creek.

2. Said access for testing shall be limited to those officers, employees and environmental consultants of Monsanto ("Monsanto Personnel") as designated by Monsanto whose presence is necessary to further the purposes of this Agreement.

3. Monsanto agrees that upon completion of the sampling and testing to be performed, all material and equipment shall be removed from the property, and said property will be restored as nearly as possible to its original state and condition. Monsanto will use all reasonable efforts to provide that the activities set forth herein are performed in a manner consistent with prevailing professional standards for all areas of activities undertaken by Monsanto Personnel. Each field activity to be conducted under this Agreement shall be coordinated by professionals with experience relative to the particular activity being conducted at the site each day.



4. As to the work to be done, or services to be performed by Monsanto or its consultants, Monsanto assumes responsibility for any liability for losses, expenses, damages, demands and claims in connection with or arising out of any injury or damage to property, sustained in connection with or to have arisen out of performance of the work hereunder. Monsanto shall indemnify, defend and save harmless the land owner of the above-described property from and agreement any and all claims, demands, actions causes of action, suits, damages, expenses (including attorney's fees and experts' fees) directly resulting from any liability described in the preceding sentence.

5. RUAN TRANSPORT CO. shall advise Monsanto of any utility lines or other hazardous or potentially hazardous conditions of which RUAN TRANSPORT CO. has actual knowledge that might reasonably be expected to be damaged by the work to be performed hereunder or that might significantly interfere with the performance of the work provided herein.

IN WITNESS WHEREOF, the parties has caused this Access Agreement to be executed the day and year first above written.

Ruan Transport Corporation  
BY: [Signature] OK  
K.K.  
TYPED NAME: LaVarne Milbrandt  
ADDRESS: P.O. Box 855  
Des Moines, IA 50304

MONSANTO CHEMICAL COMPANY  
a unit of Monsanto Company

BY: [Signature]  
TITLE: PLANT MANAGER

*Ken*

# Monsanto



Monsanto Chemical Company  
W. G. Krummrich Plant  
500 Monsanto Ave.  
Sauget, Illinois 62206-1198  
Phone: (618) 271-5835

October 1, 1991

Mr. Ken Kessler  
Ruan Transportation Corporation  
P.O. Box 855  
Des Moines, IA 50304

Dear Mr. Kessler:

Please be advised that sampling work for the Dead Creek - Sector B area is expected to begin within the next couple of weeks.

We appreciated your cooperation on this matter. If you have any questions please give me a call at (618) 482-6387.

Sincerely,

A handwritten signature in cursive script that reads "Steve Smith".

Steven D. Smith

/sdg

bbc: John Ruan III  
Henry Fabritz  
Larry Miller

#2

1300 Queeny, E. St. Louis, Ill.

June 14, 1974

Mr. John Lorentzen  
2218 Mousett  
Cahokia, Illinois

Dear Mr. Lorentzen:

I am writing in reference to the sharecropping arrangements you have with Mr. Harold Waggoner. As you may have already heard Ruan Transport Corporation is now leasing the properties of Mr. Waggoner with the intent to purchase.

It is my understanding that the past arrangements have been that you keep 2/3's of the profits from the crop and the remaining 1/3 goes to the property owner. I also understand that settlement is made when the crop is sold. Might I ask what time of year does this usually take place?

As we do have plans to purchase the property I would verry much like to visit with you as future dealings will be through Ruan Transport Corporation. Future arrangements will most likely be on the same basis and will be made by either Mr. Bill Giles or myself. Mr. Giles offices in our Des Moines, Iowa office.

I am looking forward to meeting you.

Sincerely yours,

RUAN TRANSPORT CORPORATION

Mike B. Mefford  
District Manager

cc: Bill Giles



*Adm. diary  
2/1/86*

*7-28*

**#3**

May 14, 1986

*Re: St. Clair  
Property*

Mr. Bruce L. Carlson, Attorney  
Enforcement Programs  
Division of Land Pollution Control  
Illinois Environmental Protection Agency  
2200 Churchill Road  
Springfield, IL 62706

Dear Mr. Carlson:

Re: Sauget/Cahokia Sites  
St. Clair County  
LPC 1630200005

Attached is the long lost Consent Agreement for entry to our property. If you have any questions, feel free to contact Susan Hatcher who is handling our property matters now. We have listed her on page 3.

Yours very truly,

RUAN TRANSPORT CORPORATION

  
Kenneth L. Kessler

KLK/tlc

cc: John Springer  
#Susan Hatcher

CONSENT AGREEMENT FOR ENTRY AND  
REMOVAL OR REMEDIAL ACTION

1. The undersigned (hereinafter referred to as the "owner") owns the real estate in St. Clair County, Illinois which is located approximately as shown in the shaded area on the attached map(s):

Tax Parcel No(s). 1-26-200-013 and 1-26-200-031.

2. The owner hereby authorizes and consents to the entry upon the real estate described above by officers, employees, authorized representatives, or contractors of the State of Illinois, upon showing of proper identification, for such actions as are necessary or appropriate to carry out the purposes of the Environmental Protection Act, Ill. Rev. Stat. 1985, ch. 111 1/2, pars. 1001 et seq., as amended (hereinafter the "Act"), and the rules and regulations of the Illinois Pollution Control Board. Such actions may include, but are not limited to, the following:

- a). Gathering of general information about the site and site mapping;
- b). Placement of identification markers;
- c). Installation of soil gas monitoring equipment and subsequent sampling;
- d). Geophysical study to help define site geology and the occurrence of contamination;
- e). Hydrogeological study expected to involve:
  - i). boring of test wells and holes;
  - ii). drilling and installation of a network of monitoring wells;

- iii). evaluation of aquifer flow characteristics and conduct of groundwater sampling and analysis utilizing the wells mentioned in (ii) above and any appropriate existing on-site wells;
- f). Ambient air study to determine the extent and/or potential for atmospheric contamination;
- g). Surface water study to determine the extent and/or potential for contamination of surface waters expected to involve sampling and analysis of surface waters and sediment; and
- h). Soil study to determine the extent of soil contamination expected to involve sampling and analysis of soils collected under a depth stratified sampling program.

3. The owner agrees that this Consent Agreement shall remain in effect for a period of one year from the date of signature.

4. This consent is granted in consideration of the State of Illinois' responsibility to perform environmental assessment, response action, and remedial action pursuant to the Act and the rules and regulations adopted by the Illinois Pollution Control Board.

5. The owner certifies that this Consent Agreement is entered into voluntarily and without coercion and that the authorizations contained herein are not granted in consideration of release of claims which the State of Illinois may have against him.

6. The owner also agrees to waive any claims which may arise against the State of Illinois or its officers, employees,

authorized representatives, or contractors in the course of performing the actions described above.

Date: May 14, 1986

Printed Name: Susan Hatcher

Address: P.O. Box 855

Des Moines, IA 50304

Phone: (515) 263-2043

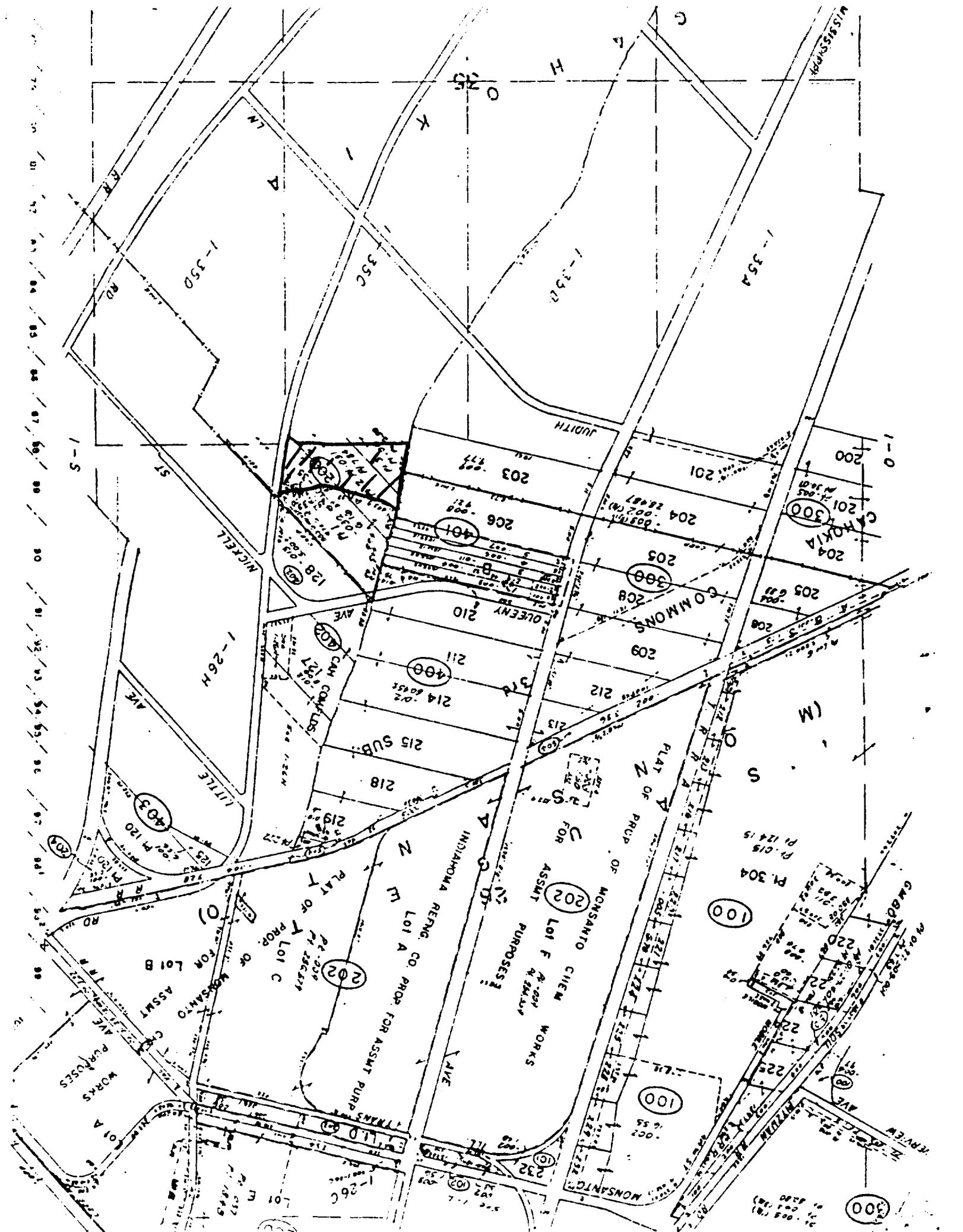
Signature of Property Owner or  
Authorized Agent of Property Owner:

*Susan Hatcher*

*Susan Hatcher*

OK  
RH

Signature of Joint Owner(s),  
if applicable: \_\_\_\_\_





bbc: John Ruan III  
Ken Penaluna  
Bill Giles

#6

*Waggoner file*

June 6, 1974

Mr. Harold Schmidt  
1300½ Queeny  
East St. Louis  
Illinois

Dear Mr. Schmidt:

This is to confirm our conversation today that effective immediately you will cease dumping any waste product on the Waggoner property.

The stopping of this action was discussed on May 31, 1974 with an understanding that it would stop June 3, 1974. If you were not informed we had a breakdown in communications. However; the subject was totally reviewed today and the matter is closed.

Sincerely yours,

RUAN TRANSPORT CORPORATION

*M. E. Mefford*  
Mike E. Mefford  
District Manager

cc: Harold Waggoner

C  
O  
P  
Y

~~check~~  
File - ✓

RE

#7

RECEIVED

AUG 30 1979

EARL CHECK

June 29, 1978

Interstate Commerce Commission  
Washington, DC 20423

Gentlemen:

SUBJECT: Docket No. MC-F-12207  
Docket No. MC-107496 (Sub. No. 951)

The purchase of the property approved in the above subject dockets  
was consummated effective June 27, 1978.

Please expedite the issuance of the certificates in Sub. No. 951.

Sincerely yours,

Henry L. Fabritz

dma

bcc Roland Rice

RECEIVED

#7

JUL 05

EARL CH

June 29, 1978

LARRY MILLER

cc: John Ruan III  
Gail Schierker  
John Springer  
Ken Kessler  
Bill Giles  
Earl Check

The purchase of the Interstate and Missouri intrastate authority held by Harold Waggoner and Company was consummated as of June 27, 1978. The Illinois intrastate authority has been made subject to a new contract and we will attempt to transfer this authority to Ruan at such time as the authority is activated. At present it is dormant and we withdrew the previous transfer application because certain protestants, particularly the sand carriers, would not withdraw their protests. Harold Waggoner wants to close out the Waggoner Corporation and this will necessitate Ruan in securing an attorney to transfer the authority from the corporation to Harold Waggoner, the individual. However, I believe the cost of doing so is worthwhile. I estimate this cost to be \$750 to \$1,500.

The protestants in the interstate application have not as yet withdrawn their appeal to the Federal Court. They have not indicated any desire to withdraw same and, of course, we could lose some of the interest authority. However, the risk is considered to be minimal.

For reasons unknown to me, Harold Waggoner transferred the real estate from the corporation to himself as an individual in 1975. Consequently, the real estate contract, a copy of which is attached, is made out with Harold Waggoner as the transferor. A title check will be made to determine if there is any problem in this area. I have a copy of the recorded warranty deed showing the property to be in the name of Harold Waggoner.

Tony Lechner, owner of Metro Construction Equipment Company, which I suspect to be a front for Wilbur Waggoner, is interested in purchasing all or a portion of the property, particularly the building and area surrounding same. He has given me a copy of an appraisal showing the value to be \$153,000. I am attaching the appraisal to Giles' copy of this memorandum so that he can analyze same and issue his recommendations based upon his previous memorandums and surveys.

LARRY MILLER

Page 2

June 29, 1978

Harold Waggoner has asked if we could make contract payments monthly rather than annually. I have told him that I didn't think so but that we would check it.

Attached is the contract to buy the real estate and the Illinois authority contract both of which require Susan's signature, after which I will mail a photostat to Harold Waggoner and his accountant.

Bob Fabritz

dm

Enclosures (2)

7

#7

May 31, 1974

To: STAFF

CC: Ken Kessler

Re: Waggoner TA

Ruan will consummate the temporary lease of the authority of Harold Waggoner and Company at 12:01 a.m. on Monday, June 3, 1974.

Harold Waggoner has been given a check in the amount of \$32,000 applicable to the purchase price of the equipment upon permanent consummation.

Harold Waggoner should go on the payroll as of June 3rd along with the other employees designated by John Ruan III.

The rent on the terminal property of \$900 a month will commence June 3rd, and Harold should be sent a check in this amount. The rental payments will apply to the property purchase price upon permanent consummation.

Harold Waggoner has been told that Ruan wishes to remove all debris and clean up the property, and he has agreed to get rid of the junk parts and so forth right away.

Harold Waggoner says that the farmer who farms the property is on a 1/3 - 2/3 basis and must be advised by March 1st if Ruan no longer cares to keep the arrangement. There has been no discussion as to who receives the 1/3 for 1974.

The leases from Waggoner to Arizona Tank Lines should be cancelled as of June 3rd, and the leases between Ruan and Arizona Tank Lines should become effective as of that date.

Traffic should work with Mefford on doing what is necessary to correct the rate schedules and work with Mefford and sales as to raising the rates to the Slay level.



H. L. Fabritz

dk

#7

June 3, 1974

Dear Harold:

Per our meeting of last week, we solicit your support in policing the dumping of material on your property. We are leasing your property effective today, and therefore, feel we cannot subject ourselves to any liability with respect to the EPA or any other governmental agency.

In addition, we request your assistance in policing the entry and exit of equipment on your property which is not owned by either yourself or any of the Ruan Companies.

We will have personnel at the terminal facility this week to begin our clean-up campaign, and urge your cooperation in removing the junk, parts, etc., from the parameter of the parking area. Mr. Ken Penaluna will be working directly with you with respect to disposal of inventories and disposition of the trailer equipment.

Yours very truly,

RUAN TRANSPORT CORPORATION

  
John Ruan III

jb  
cc: Hank Fabritz  
Ken Penaluna

Mr. Harold Waggoner  
Harold Waggoner & Company  
1300 Queeny  
E. St. Louis, Ill. 62201



# REAL ESTATE CONTRACT (SHORT)

It Is Agreed between Harold Waggoner

of Collinsville, Illinois XXXXXXXXX County, Iowa, **Sellers**, and, Ruan Transport Corporation, an  
Iowa Corporation

of Polk County, Iowa, **Buyers:** and building situated  
That Sellers hereby agree to sell and Buyers hereby agree to buy the real estate located in 1300 Quincy  
Avenue, Cahokia, IL XXXXXXXXX County, Iowa, described as:

1978 AUG 23 PM 1:37 Description attached as Appendix 1  
BOOK 2450 PAGE 106

together with all easements and servient estates appurtenant thereto, upon the following terms:

1. **TOTAL PURCHASE PRICE** for said property is the sum of One Hundred Twenty-five Thousand  
less rental payments Dollars (\$125,000.00)  
of which Twelve Thousand Five Hundred  
Dollars (\$12,500.00) has been paid herewith, receipt of which is hereby acknowledged by Sellers; and Buyers  
agree to pay the balance to Sellers at residence of Sellers, or as directed by Sellers, as follows:

The balance to be paid in ten (10) annual installments of  
Six Thousand seven hundred fifty dollars (\$6,750.00) each.

2. **INTEREST.** Buyers agree to pay interest from N/A upon the unpaid balances, at  
the rate of N/A per cent per annum, payable N/A annually.

3. **TAXES.** Sellers agree to pay all taxes up to date of final consummation

and  
any unpaid taxes thereon payable in prior years and any and all special assessments for improvements which have been  
installed at the date of this contract; and Buyers agree to pay, before they become delinquent, all other current and  
subsequent taxes and assessments against said premises. **Any proration of taxes shall be based upon the taxes  
for the year currently payable unless the parties state otherwise.\***

4. **POSSESSION.** Sellers agree to give Buyers possession of said premises on or before June 27,  
19 78

5. **INSURANCE.** Sellers agree to carry existing insurance until date of possession and Buyers agree to accept the  
insurance recovery instead of replacing or repairing buildings or improvements. Thereafter until final settlement, Buyers  
agree to keep the improvements upon said premises insured against loss by fire, tornado and extended coverage for a sum  
not less than \$82,500.00 or the balance owing under this contract, whichever is less, with insurance payable to  
Sellers and Buyers as their interests may appear, and to deliver policies therefor to Sellers.

6. **ABSTRACT.** Sellers agree to forthwith deliver to Buyers for their examination abstract of title to said prem-  
ises continued to the date of this contract showing merchantable title in accordance with ALL Title Standards. After  
examination by Buyers the abstract shall be held by Sellers until delivery of deed. Sellers agree to pay for an ad-  
ditional abstracting which may be required by acts, omissions, death or incompetency of Sellers, or either of them,  
occurring before delivery of deed.

7. **FIXTURES.** All light fixtures, electric service cable and apparatus, shades, rods, blinds, venetian blinds, awn-  
ings, storm and screen doors and windows, attached linoleum, attached carpeting, water heater, water softener, out-  
side TV tower and antenna, attached fencing and gates, pump jacks, trees, shrubs and flowers and any other attached  
fixtures are a part of the real estate and are included in this sale ~~except~~

\*Decide for yourself if that formula is fair if Buyers are purchasing a lot with newly built improvements.



8. **CARE OF PROPERTY.** Buyers shall not injure, destroy or remove the improvements or fixtures or make any material alterations thereof without the written consent of Sellers, until final payment is made.

9. **DEED.** Upon payment of all sums owing by Buyers to Sellers by virtue of this contract, Sellers agree to contemporaneously execute and deliver to Buyers a warranty deed upon the form approved by The ~~XXXX~~ State Bar Association and which shall be subject to:

- (a) Liens and encumbrances suffered or permitted by Buyers, and taxes and assessments payable by Buyers.
- (b) Applicable zoning regulations and easements of record for public utilities and established roads and highways.
- (c)

10. **FORFEITURE AND FORECLOSURE.** If Buyers fail to perform this agreement in any respect, time being made the essence of this agreement, then Sellers may forfeit this contract ~~as provided by Chapter 603 of the New York Code~~ and all payments made and improvements made on said premises shall be forfeited; or Sellers may declare the full balance owing due and payable and proceed by suit at law or in equity to foreclose this contract, in which event Buyers agree to pay costs and attorney fees and any other expense incurred by Sellers.

**11. JOINT TENANCY IN PROCEEDS AND IN SECURITY RIGHT IN REAL ESTATE.** If, and only if, the Sellers, immediately preceding this sale, hold the title to the above described property in joint tenancy, this sale shall not constitute a destruction of that joint tenancy. In that case, all rights of the Sellers in this contract, in the proceeds thereof, and in any continuing or recaptured rights of Sellers in said real estate, shall be and continue in Sellers as joint tenants with full rights of survivorship and not as tenants in common. Buyers, in the event of the death of one of such joint tenants, agree to pay any balance of the proceeds of this contract to the surviving Seller and to accept deed executed solely by such survivor; but with due regard for the last sentence of paragraph 6, above.

12. **"SELLERS."** Spouse, if not a titleholder immediately preceding this sale, shall be presumed to have executed this instrument only for the purpose of relinquishing all rights of dower, homestead and distributive share and the use of the word "Sellers" in the printed portion of this contract, without more, shall not rebut such presumption, nor in any way enlarge or extend the previous interest of such spouse in said property, or in the sale proceeds, nor bind such spouse except as aforesaid, to the terms and provisions of this contract.

13. (Here add further terms or provisions)

Words and phrases herein shall be construed as singular or plural and as masculine, feminine or neuter gender according to the context

Dated this 27th day of June 19 78

**RUAN TRANSPORT CORPORATION**

HAROLD WAGGONER

## BUYERS

## SELLERS

### Buyers' Address

**Sellers' Address**

STATE OF Iowa, Des Moines COUNTY, ss:

On this 27<sup>th</sup> day of June, A. D. 1978, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Harold D. Waggoner

to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed

Notary Public in and for said County and State.

# Real Estate Contract (Short Form)

10

**Entered for taxation the**

\_\_\_\_\_ of \_\_\_\_\_ 19\_\_\_\_

**Auditor**

Deputy

Filed for record the \_\_\_\_\_ day

19-

\_\_\_\_\_ o'clock \_\_\_\_\_ M.: and recorded in \_\_\_\_\_

Book \_\_\_\_\_ of \_\_\_\_\_ on page \_\_\_\_\_

County Records.

ecorder

Deputy

WHEN RECORDED RETURN TO

16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000-1001-1002-1003-1004-1005-1006-1007-1008-1009-1010-1011-1012-1013-1014-1015-1016-1017-1018-1019-1020-1021-1022-1023-1024-1025-1026-1027-1028-1029-1030-1031-1032-1033-1034-1035-1036-1037-1038-1039-1040-1041-1042-1043-1044-1045-1046-1047-10

All that part of Lots No. 1, 2 and 3 of "A SUBDIVISION OF LOTS 128½ & 129, COMMONFIELDS OF CAHOKIA, ST. CLAIR CO., ILL.;" reference being had to the plat thereof recorded in the Recorder's Office of St. Clair County, Illinois, in Book of Plats 33 on Page 40, lying Northwestorly of the centerline of Falling Springs Road, formerly known as Lower Cahokia Road, and that part of Dead Creek lying between the Northwestorly line of lots 1, 2 and 3 and the centerline of said Dead Creek; excepting, however, that part of Lot No. 1 described as follows:

Beginning at the stone that marks the most Northerly Corner of said Lot 128½, also being the most Northerly corner of said Lot 1; thence South 17°30' West along the bank of Dead Creek, a distance of 22.88 feet to a pipe; thence in a Northeasterly direction along a line lying parallel and 20 feet from the Southeasterly Right of Way Line of Midwest Avenue (being 66 feet in width) a distance of 23.25 feet to a pipe on the Northorasterly line of said Lot 1; thence North 43° West along the Northeasterly line of said Lot 1, a distance of 23.25 feet to the point of beginning;

And excepting further, that part of a strip of land 20 feet in width in Dead Creek lying parallel and adjacent to the Southeasterly right of way line of Midwest Avenue as constructed and laid out and established by Ordinance No. 182 of the Village of Monsanto, Illinois, extending from a stone that marks the Northerly corner of Lot 128½ of the Commonfields of Cahokia Southwestorly to the center of Dead Creek. Together with all buildings, fixtures, and appurtenances now or hereafter to the same belonging; (approximately 21.36 acres)

01-35-200-011  
012 C.F.D.  
013  
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*speedimemo.*

442611

TRIF

METRO CONSTRUCTION EQUIPMENT  
1300 Queeny Ave.  
Cahokia, Illinois 62206

Ruan Transport Corp  
666 Grand Avenue  
Des Moines, Iowa 503

TO Mr. Kessler

SUBJECT Utilities Bills

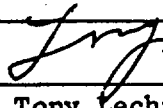
DATE 4-29-81

Please find enclosed utility bills since Metro started in business in 1978.

Please make copies and return these to us. Thank you. Also enclosed bill for  
furnace installed in fall of 1978.

PLEASE REPLY TO

SIGNED

  
Tony Lechner  
Metro Construction Equipment

DATE

SIGNED

REDIFORM 4S 469

POLY PAK (50 SETS) 4P 469

SEND PARTS 1 AND 3 WITH CARBON INTACT. -  
PART 3 WILL BE RETURNED WITH REPLY.

December 17, 1980

RANDY STAPP

cc: ~~Mel Clark~~  
Ken Kessler

The lease enclosed which Ruan Transport Corporation has with Metro Construction Equipment Company for the period March 1, 1980 through February 28, 1981 at a monthly rent of \$1,000 a month should be placed in index and permanent lease file.

The tenant has the option to purchase the property which he must do in writing prior to the expiration of the lease. If option is exercised, rental payments made are to be applied against the purchase price of the property - which price is also to be reduced by tenant's cost of a furnace.

Ruan Transport Corporation is to pay real estate taxes.

In the letter which I am enclosing, Tony Lechner of Metro Construction Equipment made the statement, "we of course desire to exercise this option between now and February 28, 1981." By copy of this memo, I am inquiring of Ken Kessler as to whether this statement can be considered to be an exercise of the option contained in the lease.

A copy of the lease is also being forwarded to Mel Clark for our rent receivable records.

JOHN SPRINGER

cf

Enclosure

payments to 2412-00-000



## LEASE-BUSINESS PROPERTY

THIS LEASE AGREEMENT, executed in duplicate, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between RUAN TRANSPORT CORPORATION

\_\_\_\_\_ (hereinafter called the "Landlord")  
whose address for the purpose of this lease is 666 Grand Avenue Des Moines  
(Street and Number) (City)  
Iowa 50309 and Metro Construction Equipment  
(State) (Zip Code)  
Company

\_\_\_\_\_ (hereinafter called the "Tenant")  
whose address for the purpose of this lease is P.O. Box 87A St. Louis  
(Street and Number) (City)  
Missouri 63166 WITNESSETH THAT:  
(State) (Zip Code)

1. **PREMISES AND TERM.** The Landlord, in consideration of the rents herein reserved and of the agreements and conditions herein contained, on the part of the Tenant to be kept and performed, leases unto the Tenant and Tenant hereby rents and leases from Landlord, according to the terms and provisions herein, the following described real estate, situated in St. Clair County, Iowa, to wit:  
ILL

Per attached exhibit that portion marked sell.

with the improvements thereon and all rights, easements and appurtenances thereto belonging, which, more particularly, includes the space and premises as may be shown on "Exhibit A", if and as may be attached hereto, for a term of 1 year 75%, commencing at midnight of the day previous to the first day of the lease term, which shall be on the 1st day of March 1980, and ending at midnight on the last day of the lease term, which shall be on the 28th day of February 1981, upon the condition that the Tenant pays rent therefor, and otherwise performs as in this lease provided.

2. **RENTAL.** Tenant agrees to pay to Landlord as rental for said term, as follows: \$ 1000.00 per month, in advance, the first rent payment becoming due upon  
~~Strike~~ ~~X 25% deduction of this amount~~  
one (b) the 1st day of March 1980,  
and the same amount, per month, in advance, on the 1st day of each month thereafter, during the term of this lease.  
In addition to the above monthly rental Tenant shall also pay:

All sums shall be paid at the address of Landlord, as above designated, or at such other place in Iowa, or elsewhere, as the Landlord may, from time to time, previously designate in writing.

Delinquent payments shall draw interest at 9 % per annum from the due date, until paid.

3. **POSSESSION.** Tenant shall be entitled to possession on the first day of the term of this lease, and shall yield possession to the Landlord at the time and date of the close of this lease term, except as herein otherwise expressly provided. Should Landlord be unable to give possession on said date, Tenant's only damages shall be a rebating of the pro rata rental.

4. **USE OF PREMISES.** Tenant covenants and agrees during the term of this lease to use and to occupy the leased premises only for lawful purposes

\_\_\_\_\_ For restrictions on such use, see paragraphs 6 (c), 6 (d) and 11 (b) below.

5. **QUIET ENJOYMENT.** Landlord covenants that its estate in said premises is lawful

and that the Tenant on paying the rent herein reserved and performing all the agreements by the Tenant to be performed as provided in this lease, shall and may peaceably have, hold and enjoy the demised premises for the term of this lease free from molestation, eviction or disturbance by the Landlord or any other persons or legal entity whatsoever. (But see paragraph 14, below.)

Landlord, shall have the right to mortgage all of its right, title, interest in said premises at any time without notice, subject to this lease.

6. **CARE AND MAINTENANCE OF PREMISES.** (a) Tenant takes said premises in their present condition except for such repairs and alterations as may be expressly herein provided.

(b) **LANDLORD'S DUTY OF CARE AND MAINTENANCE.** Landlord will keep the roof, structural part of the floor, walls and other structural parts of the building in good repair.

(c) **TENANT'S DUTY OF CARE AND MAINTENANCE.** Tenant shall, after taking possession of said premises and until the termination of this lease and the actual removal from the premises, at its own expense, care for and maintain said premises in a reasonably safe and serviceable condition, except for structural parts of the building. Tenant will furnish its own interior and exterior decorating. Tenant will not permit or allow said premises to be damaged or depreciated in value by any act or negligence of the Tenant, its agents or employees. Without limiting the generality of the foregoing, Tenant will make necessary repairs to the sewer, the plumbing, the water pipes and electrical wiring, except as follows:

and Tenant agrees to keep faucets closed so as to prevent waste of water and flooding of premises; to promptly take care of any leakage or stoppage in any of the water, gas or waste pipes. The Tenant agrees to maintain adequate heat to prevent freezing of pipes, if and only if the other terms of this lease fix responsibility for heating upon the Tenant. Tenant at its own expense may install floor covering and will maintain such floor covering in good condition. Tenant will be responsible for the plate glass in the windows of the leased premises and for maintaining the parking area, driveways and sidewalks on and abutting the leased premises, if the leased premises include the ground floor, and if the other terms of this lease include premises so described. Tenant shall make no structural alterations or improvements without the written approval of the Landlord first had and obtained, of the plans and specifications therefor.

(d) Tenant will make no unlawful use of said premises and agrees to comply with all valid regulations of the Board of Health, City Ordinances or applicable municipality, the laws of the State of ~~Mass~~ and the Federal government, but this provision shall not be construed as creating any duty by Tenant to members of the general public. If Tenant, by the terms of this lease is leasing premises on the ground floor, it will not allow trash of any kind to accumulate on said premises in the halls, if any, or the alley or yard in front, side or rear thereof, and it will remove same from the premises at its own expense. Tenant also agrees to remove snow and ice and other obstacles from the sidewalk on or abutting the premises, if premises include the ground floor, and if this lease may be fairly construed to impose such liability on the Tenant.

7. (a) **UTILITIES AND SERVICES.** Tenant, during the term of this lease, shall pay, before delinquency, all charges for use of telephone, water, sewer, gas, heat, (if heating is Tenant's responsibility), electricity, power, air conditioning (if air conditioning is the Tenant's responsibility), garbage disposal, trash disposal and not limited by the foregoing all other utilities and services of whatever kind and nature which may be used in or upon the demised premises.

(b) **AIR CONDITIONING** equipment shall be furnished at the expense of Tenant and maintenance thereof at the expense of Tenant (Landlord or Tenant)

(c) **JANITOR SERVICE** shall be furnished at the expense of Tenant (Landlord or Tenant)

(d) **HEATING** shall be furnished at the expense of Tenant (Landlord or Tenant)

8. (a) **SURRENDER OF PREMISES AT END OF TERM—REMOVAL OF FIXTURES.** Tenant agrees that upon the termination of this lease, it will surrender, yield up and deliver the leased premises in good and clean condition, except the effects of ordinary wear and tear and depreciation arising from lapse of time, or damage without fault or liability of Tenant. [See also 11(a) and 11(e) below]

(b) Tenant may, at the expiration of the term of this lease, or renewal or renewals thereof or at a reasonable time thereafter, if Tenant is not in default hereunder, remove any fixtures or equipment which said Tenant has installed in the leased premises, providing said Tenant repairs any and all damages caused by removal.

(c) **HOLDING OVER.** Continued possession, beyond the expiratory date of the term of this lease, by the Tenant, coupled with the receipt of the specified rental by the Landlord (and absent a written agreement by both parties for an extension of this lease, or for a new lease) shall constitute a month to month extension of this lease.

9. **ASSIGNMENT AND SUBLETTING.** Any assignment of this lease or subletting of the premises or any part thereof, without the Landlord's written permission shall, at the option of the Landlord, make the rental for the balance of the lease term due and payable at once. Such written permission shall not be unreasonably withheld.

10. (a) **ALL REAL ESTATE TAXES,** except as may be otherwise expressly provided in this paragraph 10, levied or assessed by lawful authority (but reasonably preserving Landlord's rights of appeal) against said real property shall be timely paid by the parties in the following proportions: by Landlord 100%; by Tenant 0%.

(b) Increase in such taxes, except as in the next paragraph provided, above the amount paid during the base year of \_\_\_\_\_ (base year if and as may be defined in this paragraph) shall be paid by Landlord, 100%; by Tenant 0%.

(c) Increase in such taxes caused by improvements of Tenant shall be paid by Landlord 100%; by Tenant 0%.

(d) **PERSONAL PROPERTY TAXES.** Tenant agrees to timely pay all taxes, assessments or other public charges levied or assessed by lawful authority (but reasonably preserving Tenant's rights of appeal) against its personal property on the premises, during the term of this lease.

(e) **SPECIAL ASSESSMENTS.** Special assessments shall be timely paid by the parties in the following proportions: by the Landlord 100%; by the Tenant 0%.

11. **INSURANCE.** (a) Landlord and Tenant will each keep its respective property interests in the premises and its liability in regard thereto, and the personal property on the premises, reasonably insured against hazards and casualties; that is, fire and those items usually covered by extended coverage; and Tenant will procure and deliver to the Landlord a certification from the respective insurance companies to that effect. Such insurance shall be made payable to the parties hereto as their interests may appear, except that the Tenant's share of such insurance proceeds are hereby assigned and made payable to the Landlord to secure rent or other obligations then due and owing Landlord by Tenant. [See also 11(a) below]

(b) Tenant will not do or omit the doing of any act which would vitiate any insurance, or increase the insurance rates in force upon the real estate improvements on the premises or upon any personal property of the Tenant upon which the Landlord by law or by the terms of this lease, has or shall have a lien.

(c) Subrogation rights are not to be waived unless a special provision is attached to this lease.

(d) Tenant further agrees to comply with recommendations of Iowa Insurance Service Bureau and to be liable for and to promptly pay, as if current rental, any increase in insurance rates on said premises and on the building of which said premises are a part, due to increased risks or hazards resulting from Tenant's use of the premises otherwise than as herein contemplated and agreed.

(e) **INSURANCE PROCEEDS.** Landlord shall settle and adjust any claim against any insurance company under its said policies of insurance for the premises, and said insurance monies shall be paid to and held by the Landlord to be used in payment for cost of repairs or restoration of damaged building, if the destruction is only partial. [See also 11(a), above]

**12. INDEMNITY AND LIABILITY INSURANCE.** Except as to any negligence of the Landlord, arising out of roof and structural parts of the building, Tenant will protect, indemnify and save harmless the Landlord from and against any and all loss, costs, damage and expenses occasioned by, or arising out of, any accident or other occurrence causing or inflicting injury and/or damage to any person or property, happening or done, in, upon or about the leased premises, or due directly or indirectly to the tenancy, use or occupancy thereof, or any part thereof by the Tenant or any person claiming through or under the Tenant. The Tenant further covenants and agrees that it will at its own expense procure and maintain casualty and liability insurance in a responsible company or companies authorized to do business in the State of ILL in amounts not less than \$100,000 \_\_\_\_\_ for any one person injured, and \$500,000 \_\_\_\_\_ for any one accident, and with the limits of \$25,000 \_\_\_\_\_ for property damage, protecting the Landlord against such claim, damages, costs or expenses on account of injury to any person or persons, or to any property belonging to any person or persons, by reason of such casualty, accident or other happening on or about the demised premises during the term thereof. Certificates or copies of said policies, naming the Landlord, and providing for fifteen (15) \_\_\_\_\_ days' notice to the Landlord before cancellation shall be delivered to the Landlord within twenty (20) \_\_\_\_\_ days from the date of the beginning of the term of this lease. As to insurance of the Landlord for roof and structural faults, see paragraph 11(a) above.

**13. FIRE AND CASUALTY. PARTIAL DESTRUCTION OF PREMISES.** (a) In the event of a partial destruction or damage of the leased premises, which is a business interference, that is, which prevents the conducting of a normal business operation and which damage is reasonably repairable within sixty (60) days after its occurrence, this lease shall not terminate but the rent for the leased premises shall abate during the time of such business interference. In the event of partial destruction, Landlord shall repair such damages within 60

\_\_\_\_\_ days of its occurrence unless prevented from so doing by acts of God, the elements, the public enemy, strikes, riots, insurrection, government regulations, city ordinances, labor, material or transportation shortages, or other causes beyond Landlord's reasonable control.

(b) **ZONING.** Should the zoning ordinance of the city or municipality in which this property is located make it impossible for Landlord, using diligent and timely effort to obtain necessary permits and to repair and/or rebuild so that Tenant is not able to conduct its business on these premises, then such partial destruction shall be treated as a total destruction as in the next paragraph provided.

(c) **TOTAL DESTRUCTION OF BUSINESS USE.** In the event of a destruction or damage of the leased premises including the parking area (if a parking area is a part of the subject matter of this lease) so that Tenant is not able to conduct its business on the premises or the then current legal use for which the premises are being used and which damages cannot be repaired within sixty (60) \_\_\_\_\_ days this lease may be terminated at the option of either the Landlord or Tenant. Such termination in such event shall be effected by written notice of one party to the other, within twenty (20) \_\_\_\_\_ days after such destruction. Tenant shall surrender possession within ten (10) \_\_\_\_\_ days after such notice issues, and each party shall be released from all future obligations hereunder. Tenant paying rental pro rata only to the date of such destruction. In the event of such termination of this lease, Landlord at its option, may rebuild or not, according to its own wishes and needs.

**14. CONDEMNATION. (a) DISPOSITION OF AWARDS.** Should the whole or any part of the demised premises be condemned or taken by a competent authority for any public or quasi-public use or purpose, each party shall be entitled to retain, as its own property, any award payable to it. Or in the event that a single entire award is made on account of the condemnation, each party will then be entitled to take such proportion of said award as may be fair and reasonable.

**DATE OF LEASE TERMINATION.** If the whole of the demised premises shall be so condemned or taken, the Landlord shall not be bound except and as its rights are preserved as in paragraph 14(a) above.

**15. TERMINATION OF LEASE AND DEFAULTS OF TENANT. (a) TERMINATION UPON EXPIRATION OR UPON NOTICE OF DEFAULTS.** This lease shall terminate upon expiration of the demised term; or if this lease expressly and in writing provides for any option or options, and if any such option is exercised by the Tenant, then this lease will terminate at the expiration of the option term or terms. Upon default in payment of rental herein or upon any other default by Tenant in accordance with the terms and provisions of this lease, this lease may at the option of the Landlord be cancelled and forfeited, PROVIDED, HOWEVER, before any such cancellation and forfeiture except as provided in 15(b) below, Landlord shall give Tenant a written notice specifying the default, or defaults, and stating that this lease will be cancelled and forfeited ten (10) \_\_\_\_\_ days after the giving of such notice, unless such default, or defaults, are remedied within such grace period. (See paragraph 22, below.) As an additional optional procedure or as an alternative to the foregoing (and neither exclusive of the other) Landlord may proceed as in paragraph 21, below, provided.

(b) **BANKRUPTCY OR INSOLVENCY OF TENANT.** In the event Tenant is adjudicated a bankrupt or in the event of a judicial sale or other transfer of Tenant's leasehold interest by reason of any bankruptcy or insolvency proceedings or by other operation of law, but not by death, and such bankruptcy, judicial sale or transfer has not been vacated or set aside within ten (10) days from the giving of notice thereof by Landlord to Tenant, then and in any such events, Landlord may, at its option, immediately terminate this lease, re-enter said premises, upon giving of ten (10) days' written notice by Landlord to Tenant.

(c) In (a) and (b) above, waiver as to any default shall not constitute a waiver of any subsequent default or defaults.

(d) Acceptance of keys, advertising and re-renting by the Landlord upon the Tenant's default shall be construed only as an effort to mitigate damages by the Landlord, and not as an agreement to terminate this lease.

**16. RIGHT OF EITHER PARTY TO MAKE GOOD ANY DEFAULT OF THE OTHER.** If default shall be made by either party in the performance of, or compliance with, any of the terms, covenants or conditions of this lease, and such default shall have continued for thirty (30) days after written notice thereof from one party to the other, the person aggrieved, in addition to all other remedies now or hereafter provided by law, may, but need not, perform such term, covenant or condition, or make good such default and any amount advanced shall be repaid forthwith on demand, together with interest at the rate of 9 \_\_\_\_\_% per annum, from date of advance.

**17. SIGNS.** (a) Tenant shall have the right and privilege of attaching, affixing, painting or exhibiting signs on the leased premises, provided only (1) that any and all signs shall comply with the ordinances of the city or municipality in which the property is located and the laws of the State of Iowa; (2) such signs shall not change the structure of the building; (3) such signs if and when taken down shall not damage the building; and (4) such signs shall be subject to the written approval of the Landlord, which approval shall not be unreasonably withheld.

(b) Landlord during the last ninety (90) days of this lease, or extension, shall have the right to maintain in the windows or on the building or on the premises either or both a "For Rent" or "For Sale" sign and Tenant will permit, at such time, prospective tenants or buyers to enter and examine the premises.

**18. MECHANIC'S LIENS.** Neither the Tenant nor anyone claiming by, through, or under the Tenant, shall have the right to file or place any mechanic's lien or other lien of any kind or character whatsoever, upon said premises or upon any building or improvement thereon, or upon the leasehold interest of the Tenant therein, and notice is hereby given that no contractor, sub-contractor, or anyone else who may furnish any material, service or labor for any building, improvements, alteration, repairs or any part thereof, shall at any time be or become entitled to any lien thereon, and for the further security of the Landlord, the Tenant covenants and agrees to give actual notice thereof in advance, to any and all contractors and sub-contractors who may furnish or agree to furnish any such material, service or labor.

**19. LANDLORD'S LIEN AND SECURITY INTEREST.** (a) Said Landlord shall have, in addition to the lien given by law, a security interest as provided by the Uniform Commercial Code of Iowa, upon all personal property and all substitutions therefor, kept and used on said premises by Tenant. Landlord may proceed at law or in equity with any remedy provided by law or by this lease for the recovery of rent, or for termination of this lease because of Tenant's default in its performance.

(b) **SPOUSE.** If spouse is not a Tenant, then the execution of this instrument by the spouse shall be for the sole purpose of creating a security interest on personal property and waiving rights of homestead, rights of distributive share, and exemptions.

**20. SUBSTITUTION OF EQUIPMENT, MERCHANDISE, ETC.** (a) The Tenant shall have the right, from time to time, during the term of this lease, or renewal thereof, to sell or otherwise dispose of any personal property of the Tenant situated on the said demised premises, when in the judgment of the Tenant it shall have become obsolete, outworn or unnecessary in connection with the operation of the business on said premises; provided, however, that the Tenant shall, in such instance (unless no substituted article or item is necessary) at its own expense, substitute for such items of personal property so sold or otherwise disposed of, a new or other item in substitution thereof, in like or greater value and adapted to the affixed operation of the business upon the demised premises.

(b) Nothing herein contained shall be construed as denying to Tenant the right to dispose of inventoried merchandise in the ordinary course of the Tenant's trade or business.

21. **RIGHTS CUMULATIVE.** If various rights, powers, options, elections and remedies of either party, provided in this lease, shall be construed as cumulative and no one of them as exclusive of the others, or exclusion of any one of them, remedies or priorities, allowed either party by law, and shall in no way affect or impair the right of either party to pursue any other equitable or legal remedy to which either party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

22. **NOTICES AND DEMANDS.** Notices as provided for in this lease shall be given to the respective parties hereto at the respective addresses designated on page one of this lease unless either party notifies the other, in writing, of a different address. Without prejudice to any other method of notifying a party in writing or making a demand or other communication, such message shall be considered given under the terms of this lease when sent, addressed as above designated, postage prepaid, by registered or certified mail, return receipt requested, by the United States mail and so deposited in a United States mail box.

23. **PROVISIONS TO BIND AND BENEFIT SUCCESSORS, ASSIGNS, ETC.** Each and every covenant and agreement herein contained shall extend to and be binding upon the respective successors, heirs, administrators, executors and assigns of the parties hereto; except that if any part of this lease is held in joint tenancy, the successor in interest shall be the surviving joint tenant.

24. **CHANGES TO BE IN WRITING.** None of the covenants, provisions, terms or conditions of this lease to be kept or performed by Landlord or Tenant shall be in any manner modified, waived or abandoned, except by a written instrument duly signed by the parties and delivered to the Landlord and Tenant. **This lease contains the whole agreement of the parties.**

25. **RELEASE OF DOWER.** Spouse of Landlord, appears as a party signatory to this lease solely for the purpose of releasing dower, or distributive share, unless said spouse is also a co-owner of an interest in the leased premises.

26. **CONSTRUCTION.** Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to the context.

27. Tenant shall have an option to purchase the leased premises for \$149,000 less Tenant's cost of a furnace. Any rental payments made hereunder shall apply to the to the purchase price. Should Tenant desire to exercise this option it must do so in writing to Landlord prior to the expiration of this lease.

IN WITNESS WHEREOF, the parties hereto have duly executed this lease in duplicate the day and year first above written.

LANDLORD'S SPOUSE  
(See paragraph 25)

TENANT'S SPOUSE  
(See paragraph 19(b))

INDIVIDUAL

STATE OF \_\_\_\_\_ SS.  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_

\_\_\_\_\_ to me personally known to be the identical persons named in and who executed the within and foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

(SEAL)

\_\_\_\_\_  
Notary Public in and for said County and State

CORPORATION.

STATE OF \_\_\_\_\_ } SS.  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 19\_\_\_\_, before me, the undersigned a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_

\_\_\_\_\_ to me personally known, who being by me duly sworn, did say that they are the \_\_\_\_\_ and \_\_\_\_\_ respectively, of said corporation executing the within and foregoing instrument, that (no seal has been procured by the said) corporation; that said instrument was signed (and sealed) on (the seal affixed thereto is the seal of said)

behalf of said corporation by authority of its Board of Directors; and that the said \_\_\_\_\_ and \_\_\_\_\_ as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it and by them voluntarily executed.

(SEAL)

\_\_\_\_\_  
Notary Public in and for said County and State

FIDUCIARY

STATE OF \_\_\_\_\_ } SS.  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 19\_\_\_\_, before me, the undersigned, a Notary Public in and for said County in said State, personally appeared \_\_\_\_\_ as Executor of the Estate of \_\_\_\_\_, Deceased, to me known to be the identical person named in and who executed the foregoing instrument and acknowledged that \_\_\_\_\_ he executed the same as the voluntary act and deed of himself and of such fiduciary.

(SEAL)

\_\_\_\_\_  
Notary Public in and for said County and State

PARTNER

STATE OF \_\_\_\_\_ } SS.  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 19\_\_\_\_, before me, the undersigned, a Notary Public in and for said County and State personally appeared \_\_\_\_\_ and \_\_\_\_\_

\_\_\_\_\_ to me personally known, who, being by me duly sworn, did say that he is (they are) member(s) of the Partnership \_\_\_\_\_ executing the within and foregoing instrument and acknowledged that (he) (they) executed the same as the voluntary act and deed of said co-partner(s) by (him) (them) and by said partnership voluntarily executed.

\_\_\_\_\_  
Notary Public in and for said County and State

For acknowledgment as a corporate fiduciary  
see obverse side of Court Officer Deed  
(Official Form No. 101).



## SETTLEMENT STATEMENT

1. ☐ FHA 2. ☐ FmHA 3. ☒ CONV. UNINS.4. ☐ VA 5. ☐ CONV. INS.

6. File Number:

7. Loan Number:

8. Mortgage Insurance Case Number:

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. NAME OF BORROWER: Tony L. Lechner Velma B. Lechner	E. NAME OF SELLER: Ruan Transport Corp.	F. NAME OF LENDER: The First National Bank in Madison
G. PROPERTY LOCATION: 1300 Queeny Cahokia, IL	H. SETTLEMENT AGENT:  PLACE OF SETTLEMENT:	I. SETTLEMENT DATE:

## J. SUMMARY OF BORROWER'S TRANSACTION

## 100. GROSS AMOUNT DUE FROM BORROWER:

101. Contract sales price	149,000.00
102. Personal property	
103. Settlement charges to borrower (line 1400)	
104. Interest on Extension of Lease	2,691.00
Adjustments for items paid by seller in advance	
106. City/town taxes to	
107. County taxes to	
108. Assessments to	
109.	
110.	
111.	
112.	
120. GROSS AMOUNT DUE FROM BORROWER	151,691.00
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:	
201. Deposit or earnest money	10,000.00
202. Principal amount of new loan(s)	
203. Existing loan(s) taken subject to	
204. Rent Applied	
205. Furnace	
206.	
207.	
208.	
209.	
Adjustments for items unpaid by seller	
210. City/town taxes to	
211. County taxes to	
212. Assessments to	
213. 1980 R/E Taxes	5,382.40
214. 1981 R/E Taxes	1,311.18
215.	
216.	
217.	
218.	
219.	
220. TOTAL PAID BY/FOR BORROWER	30,773.58
300. CASH AT SETTLEMENT FROM/TO BORROWER	
301. Gross amount due from borrower (line 120)	151,691.00
302. Less amounts paid by/for borrower (line 220)	(30,973.58)
303. CASH <input checked="" type="checkbox"/> FROM) ( <input type="checkbox"/> TO) BORROWER	120,917.42

## K. SUMMARY OF SELLER'S TRANSACTION

## 400. GROSS AMOUNT DUE TO SELLER:

401. Contract sales price	149,000.00
402. Personal property	
403.	
404. Interest on Extension of Lease	2,691.00
Adjustments for items paid by seller in advance	
406. City/town taxes to	
407. County taxes to	
408. Assessments to	
409.	
410.	
411.	
412.	
420. GROSS AMOUNT DUE TO SELLER	151,691.00
500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
501. Excess deposit (see instructions)	10,000.00
502. Settlement charges to seller (line 1400)	
503. Existing loan(s) taken subject to	
504. Payoff of first mortgage loan	
505. Payoff of second mortgage loan	
506. Rent Applied	12,000.00
507. Furnace	2,080.00
508.	
509.	
Adjustments for items unpaid by seller	
510. City/town taxes to	
511. County taxes to	
512. Assessments to	
513. 1980 R/E Taxes	5,382.40
514. 1981 R/E Taxes	1,311.18
515.	
516.	
517.	
518.	
519.	
520. TOTAL REDUCTION AMOUNT DUE SELLER	30,773.58
600. CASH AT SETTLEMENT TO/FROM SELLER	
601. Gross amount due to seller (line 420)	151,691.00
602. Less reductions in amount due seller (line 520)	(30,973.58)
603. CASH <input checked="" type="checkbox"/> TO) ( <input type="checkbox"/> FROM) SELLER	120,917.42

SELLER'S TRANSACTION

DE L-400 57

CLOSING - 5-8-81



MULTIPLE COLUMN

MADE IN U.S.A.

TOBY L. LECTHER AND VERMONT LECTHER

CONTRACT PRICE

RENTAL PAYMENTS

FEEDBACK

DOWN PAYMENT

INTEREST AND TAXES (3 mos - 1981 - 13th anniversary)

Net Loan Proceeds

DUE COLLECTOR for TAXES (1980)

DUE RENTAL TRANSPORT CORPORATION:

CHICAGO TITLE CO  
RECORDING CHARGES

CHARGES

149000.00

12000.00

2080.00

100000.00

2691.00

1311.18

95000.00

538240

151691.00

125973.58

259174.2

151691.00

151691.00

Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, Mississippi, New Jersey, New York, Ohio, Tennessee, Texas, and West Virginia.

Support for the applications was offered by five of eight shippers of chemicals participating in transportation contracts with Waggoner.

Proctor and Gamble Company has facilities throughout the world, including one in St. Louis. The company produces soaps, detergents, shortenings, edible products, household cleaning products and industrial chemicals. The St. Louis plant produces fatty acids of various types, palmsoy, and tallow, which are transported in bulk, both by rail and motor carrier, of which approximately 65 percent is shipped by motor carrier. It has used the services of Waggoner and Rogers. It ships approximately 200,000 pounds of chemicals per month by Waggoner destined to points in Iowa, Illinois, Ohio, Missouri, Tennessee, Kentucky, Pennsylvania, Minnesota, and New Jersey. It supports the retention of the existing authority on a statewide basis in order to avoid a lessening of available carrier service. It does not matter to the shipper whether a carrier that it utilizes holds contract or common carrier authority.

Agrico Chemical Company manufactures and markets agricultural chemicals and fertilizers in all States east of the Rocky Mountains. Agrico has had a contract with Waggoner since 1968. It has used Ruan elsewhere and has been satisfied with the service. Its interest is to see that the available service remains in existence.

Allied Chemical Corporation has had a contract with Waggoner for over 10 years. It has used Ruan's services elsewhere for shipments of chemicals. The company is the sixth largest chemical producer in the United States. It has a plant at East St. Louis which manufactures liquid and dry aluminum sulfate. The liquid product moves entirely in bulk, in tank vehicles, and the dry products moves in bulk and in packages. This product is sold to municipalities and paper manufacturers throughout the United States. The East St. Louis plant ships approximately 20,000 tons annually via motor carrier, utilizing private and common carriage. In 1973, it used Waggoner primarily to Kansas. It has not used Waggoner since the latter part of 1973. Waggoner's broad destination authority is of value because the shipper is offering bids which would affect the growth of the East St. Louis plant. The type of authority the carrier holds, whether contract or common, is not of importance to Allied. It switched to Klipsch when Waggoner ran into labor difficulties. It supports this application because in the past it has had at least two or three carriers and wants that service to continue to be available.

Wood Treating Chemicals Company, a division of Koppers Co., Inc., operates a plant in St. Louis. It produces liquid wood preservatives derived from pentachlorophenol and an oil base. The product is used

Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, Mississippi, New Jersey, New York, Ohio, Tennessee, Texas, and West Virginia.

Support for the applications was offered by five of eight shippers of chemicals participating in transportation contracts with Waggoner.

Proctor and Gamble Company has facilities throughout the world, including one in St. Louis. The company produces soaps, detergents, shortenings, edible products, household cleaning products and industrial chemicals. The St. Louis plant produces fatty acids of various types, palmsoy, and tallow, which are transported in bulk, both by rail and motor carrier, of which approximately 65 percent is shipped by motor carrier. It has used the services of Waggoner and Rogers. It ships approximately 200,000 pounds of chemicals per month by Waggoner destined to points in Iowa, Illinois, Ohio, Missouri, Tennessee, Kentucky, Pennsylvania, Minnesota, and New Jersey. It supports the retention of the existing authority on a statewide basis in order to avoid a lessening of available carrier service. It does not matter to the shipper whether a carrier that it utilizes holds contract or common carrier authority.

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Wood Treating Chemicals Company, a division of Koppers Co., Inc., operates a plant in St. Louis. It produces liquid wood preservatives derived from pentachlorophenol and an oil base. The product is used

to treat railroad ties, farm implements, and army ammunition boxes. In 1973, it used Waggoner to serve three destinations in Indiana and Tennessee and one destination each in the States of Kansas, Ohio, and Texas. It also shipped products via other modes to two destinations in Illinois and one in Iowa. It has salesmen soliciting throughout the United States. Due to business expansion it now ships products to Pennsylvania, Alabama, and Mississippi. It ships eight or nine times more product by motor vehicle than by rail. The average volume shipped per month is 60,000 to 80,000 gallons. It ceased shipping via Waggoner due to Waggoner's labor difficulties in late 1973, and is now utilizing the services of Rogers. It tried to utilize two other carriers, one of which was Slay, but Slay, due to lack of equipment, could not provide the service. The reason for supporting the application is to insure that sufficient carriers are available and it does not matter whether the service is provided pursuant to contract or common carrier authority.

The Glidden-Durkee Co., Division of SMC Corporation, operates a plant in St. Louis, producing alkyd urea and baking enamel. The product is shipped in bulk form. It has held a contract with Waggoner for 10 years or more. It sells 20 to 24 shipments of product annually to Tupelo, Miss. It has shipped a similar product to Carthage, Mo., and a water bearing product to Arkansas. Since entering into a contract with Waggoner, it has used Waggoner's services and has continued to utilize Waggoner during the period of Ruan's management. It is supporting this application in order that the service may continue to be available. It states that it makes no difference if Ruan is issued contract or common carrier authority as long as the service is available.

Rogers is a motor common carrier specializing in the transportation of liquid and dry bulk products over irregular routes. As pertinent to this proceeding, Rogers holds authority in No. MC-64932 authorizing the transportation of liquid chemicals, in bulk, in tank vehicles, from St. Louis and Sauget, to points in Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Pennsylvania, Tennessee, and Wisconsin; liquid acids and liquid chemicals, in bulk, in tank vehicles, from St. Louis and Sauget, to points in Vermont, New Hampshire, and Maine (the latter subject to a territorial restriction); liquid chemicals, in bulk, in tank vehicles, from St. Louis, to points in, among others, West Virginia, Alabama, Mississippi, Arkansas, Louisiana, Kansas, Oklahoma, and, as the result of a gateway elimination proceeding, all points in the State of Texas. Gateway elimination notices filed pursuant to Ex Parte No. MC-55 (Sub-No. 8), Gateway Elimination, 109 M.C.C. 530, permit direct service to the States of Connecticut, Delaware, Maryland, Massachusetts, and Rhode Island and to the States of Nebraska and Texas.

Rogers has been authorized to serve St. Louis for many years. For the transportation of liquid chemicals, Rogers operates 336 tractors and 508 trailers suitable for the transportation of liquid commodities including carbon steel, stainless steel, aluminum, and

PRODUCT MOVEMENTS

	<u>1-1-73 thru 3-19-74</u>	<u>6-3-74 to Present</u>
1. Cooper	2 loads to Texas	1 load to New Jersey
2. Allied	9 loads to McPherson, Kans.	
3. Glidden	22 loads to Tupelo, Miss.	14 loads to Tupelo, Miss.
4. Parker	2 loads to Newton, Ia.	6 loads to Iowa and Alabama
5. Proctor & Gamble	62 loads to Ohio, Illinois and Iowa	
6. Koppers	100 loads to Iowa, Illinois, Indiana, Kansas, Ohio, Tennessee	
7. Monsanto	538 loads	

RUAN  
TRANSPORT  
CORPORATION

#2

June 1, 1994

Joseph M. Kellmeyer, Esq.  
Coburn & Croft  
One Mercantile Center, Suite 2900  
St. Louis, MO 63101

Re: Cerro Copper Products v.  
Monsanto Company

3200 RUAN CENTER  
666 GRAND AVENUE  
DES MOINES, IOWA  
50309  
515-245-2500

Dear Mr. Kellmeyer:

We have concluded the search of our records in response to your subpoena served April 12th.

In order to save you from having to come to Des Moines, I am attaching copies of the material we have found.

They are:

1. Letter from EPA dated December 27, 1989.
2. Letter from Monsanto dated January 22, 1990.
3. Letter from EPA dated March 7, 1990 with attachment.
4. Letter from Monsanto dated March 20, 1990.
5. Letter from Monsanto dated April 17, 1990.
6. Fax from Monsanto dated May 24, 1990.
7. Letter from Monsanto dated June 27, 1990.
8. Letter from Monsanto dated June 28, 1990.
9. Letter from Monsanto dated July 5, 1990.
10. Letter from Ruan dated August 15, 1990.
11. Letter from EPA dated August 8, 1990.
12. Letter from James Stewart, attorney, dated August 21, 1990.
13. Letter from EPA dated December 20, 1990 with copy of consent order.
14. Letter and check from Ruan dated December 27, 1990.
15. Letter from Cerro Copper dated January 7, 1990.
16. Letter from Midwest Rubber dated January 4, 1991.
17. Letter from Monsanto dated August 1, 1990
18. Letter from Ruan with Access Agreement dated August 22, 1990.
19. Letter from Monsanto dated October 1, 1991.

Yours truly,

RUAN TRANSPORT CORPORATION



Kenneth L. Kessler  
Director of Legal Services

pb  
Attachments

bbc: John Ruan III ✓  
Ken Penaluna  
Bill Giles

#6

*Waggoner file*

June 6, 1974

C  
O  
P  
Y

Mr. Harold Schmidt  
1300½ Queeny  
East St. Louis  
Illinois

Dear Mr. Schmidt:

This is to confirm our conversation today that effective immediately you will cease dumping any waste product on the Waggoner property.

The stopping of this action was discussed on May 31, 1974 with an understanding that it would stop June 3, 1974. If you were not informed we had a breakdown in communications. However; the subject was totally reviewed today and the matter is closed.

Sincerely yours,

RUAN TRANSPORT CORPORATION

*Mike*  
Mike E. Mefford  
District Manager

cc: Harold Waggoner



EXHIBIT NO. 13  
RUAN TRANSPORT CORPORATION  
-PURCHASE-  
HAROLD WAGGONER & COMPANY  
DOCKET MC-F-12207  
MC 107496 SUB 951

INTERSTATE SHIPMENTS BY HAROLD WAGGONER & COMPANY  
FOR PERIOD BEGINNING 1-2-73 AND ENDING 3-19-74  
LISTED ACCORDING TO DESTINATION CITY AND STATE

## LOAD ORIGIN CODE

<u>CODE NUMBER</u>	<u>ORIGIN</u>
4012	Monsanto Co. Sauget, Ill.
2089	Wood Treating Chemicals Co. St. Louis, Mo.
4166	Procter & Gamble Distributing Co. St. Louis, Mo.
4267	The Parker Company St. Louis, Missouri
4381	Mobil Chemical Company Sauget, Illinois
4703	Glidden-Durkee St. Louis, Mo.
4729	Allied Chemical Corporation East St. Louis, Ill.
4904	Edwin Cooper, Inc. Sauget, Ill.

#7

AGREEMENT OF LEASE AND SALE

This Agreement made this 12th day of March, 1974, by and between RUAN Transport Corporation, an Iowa corporation, having its principal place of business in Des Moines, Iowa, hereinafter sometimes referred to as "RUAN," and Harold Waggoner & Company, a Delaware corporation, having its principal place of business in Collinsville, Illinois, hereinafter sometimes referred to as "WAGGONER."

WITNESSETH:

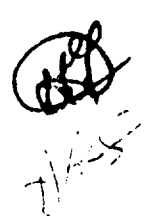
WHEREAS, RUAN is a common carrier of commodities in bulk by motor vehicle in interstate commerce pursuant to Certificates of Public Convenience and Necessity duly granted by the Interstate Commerce Commission, hereinafter sometimes referred to as "Commission," in Docket No. MC-107496 and Subs thereto, and in intrastate commerce pursuant to appropriate authorities duly granted by the respective state regulatory agencies holding jurisdiction thereof; and

WHEREAS, WAGGONER is a contract carrier of commodities in bulk by motor vehicle in interstate commerce pursuant to permits duly granted by the Commission in Docket No. MC-115873 and Subs thereto, and authorities in intrastate commerce pursuant to appropriate agencies duly granted by the respective state regulatory agencies holding jurisdiction thereof;

WHEREAS, RUAN and WAGGONER desire to enter into an agreement wherein WAGGONER will sell to RUAN and RUAN will purchase certain authorities, equipment, and real estate more specifically described herein;

NOW, THEREFORE, in consideration of the covenants, conditions, and agreements hereinafter recited and subject to all requisite governmental approvals and authorizations, the parties hereto covenant and agree upon the following terms and conditions:

1. Sale of Rights. Subject to the prior approval of the Commission and all such other governmental approvals as by law may be required, WAGGONER hereby bargains, sells, transfers and conveys, free and clear of all liens and



encumbrances of every kind and description, to RUAN or assigns, all right, title and interest in and to the said interstate and intrastate operating rights duly granted to WAGGONER by the Commission and the appropriate regulatory agencies of the states of Illinois and Missouri, as set forth, respectively, in Appendix A hereto.

2. The final consummation date shall be twenty (20) days after the effective date of the final order of approval of this purchase and conversion and transfer of authority by the Interstate Commerce Commission and the appropriate regulatory body of the state of Illinois or the date of the entry of judgment by the last court of review, whichever occurs last, or such other date within twenty (20) days of the same as RUAN shall elect by written notice to WAGGONER mailed at least five (5) days prior thereto. For purposes of this Agreement, a final order shall be taken to be an order which by its terms authorizes RUAN to purchase and convert the authority in accordance with the terms of this agreement and without restrictions on the continued use of the operating rights or with restrictions thereon which are acceptable to RUAN and which by its terms is final and effective and from which no further appeal is taken. The "temporary consummation date" shall be within twenty (20) days after the effective date of the order of approval of this lease of operating rights of WAGGONER by the Interstate Commerce Commission and the appropriate regulatory body of the state of Illinois. The final and temporary consummation of this agreement shall take place in such place and at such offices as the parties mutually agree upon.

3. Purchase Price of Rights. In consideration of the sale and transfer of the said operating rights, RUAN agrees to pay to WAGGONER a maximum purchase price of two hundred thousand (\$200,000.00) Dollars payable as follows:

twenty thousand (\$20,000.00) Dollars on date of final consummation and the balance in ten (10) annual installments of eighteen thousand (\$18,000.00) each, the first installments commencing one (1) year after date of final consummation;


provided, however, that such payments or sums as may be paid by RUAN to WAGGONER during the period of the temporary lease of authority as hereinafter described, will reduce proportionately the said purchase price.

4. Regulatory Approval and Lease of Rights. The parties hereto forthwith will apply to and petition the said Commission and all such other regulatory agencies as by law may be requisite for authority to convert the contract carrier permit issued by the Commission to a common carrier certificate and to purchase the authorities, equipment, land and building described in Appendices, A, B and C hereto. Simultaneously therewith the parties shall seek all necessary authorities to lease the said properties temporarily. Upon the grant of authority to lease the said rights, RUAN will pay to WAGGONER in cash or credits a monthly rental of five percent (5%) of the total gross revenues derived from Operations over the said rights computed monthly; provided, however, that in the event all requisite regulatory approval for the proposed purchase is obtained, the said rental payments will be applied in reduction of the purchase price referred to in Paragraph 3 above. Should the purchase of rights not be consummated WAGGONER will retain all monies paid pursuant to this paragraph.

5. Preparation of Applications. WAGGONER will supply to counsel for RUAN all necessary documents, authorizations, statements and things as may be required or deemed useful by said counsel in the preparation of the necessary applications and amendments, and will make available such witnesses as said counsel may request to appear at any public hearing or in the preparation of verified statements for submission before the said Commission and regulatory agencies or otherwise.

6. Sale of Equipment. Subject to the prior approval of the Commission and of such other governmental agencies as by law may be required, WAGGONER hereby bargains, sells, transfers, and conveys, free of all liens and encumbrances of every kind and description, to RUAN or assigns, all right, title, and interest in and to the equipment as set forth in Appendix B hereto.

7. Purchase Price of Equipment. In consideration of the sale and transfer of said equipment, RUAN agrees to pay to WAGGONER the total purchase price of Two Hundred Twelve Thousand Dollars (\$212,000), subject, however, to the following conditions:

- A. WAGGONER shall be free to sell at any time any item of equipment listed on Appendix B hereto with the exception of the 16 trailers, the listing for which is accompanied by an asterisk and for which no agreed value is shown. The sale by WAGGONER of any item of equipment shall be at or above the listed agreed value thereof and, when any such sale takes place, the agreed purchase price of Two Hundred Twelve Thousand Dollars (\$212,000) shall be reduced by the agreed value of the equipment sold.
  - B. Upon the date this agreement is executed, RUAN will make a payment of Thirty Thousand Dollars (\$30,000) on the total purchase price, and upon the date the application for temporary lease is acted upon, shall make an additional payment of Thirty Two Thousand Dollars, (\$32,000). In event approval of the entire transaction is granted, RUAN will pay the balance of the agreed purchase price in ten annual installments of Fifteen Thousand Dollars (\$15,000) each, the first installment being due upon consummation of the transaction.
- 

8. Sale of Land and Buildings. Subject to the prior approval of the Commission and all such other governmental approvals as by law may be required, WAGGONER hereby bargains, sells, transfers and conveys, free and clear of all liens and encumbrances of every kind and description, to RUAN, all right, title and interest in and to the land and buildings as set forth, in Appendix C hereto.

9. Purchase Price of Land and Buildings. In consideration of the sale and transfer of said land and buildings, RUAN agrees to pay to WAGGONER a maximum purchase price of forty-two thousand five hundred (\$42,500.00) Dollars for the land and eighty two thousand five hundred (\$82,500.00) Dollars for the buildings payable as follows:

twelve thousand five hundred (\$12,500.00) Dollars on date of final consummation and the balance in ten (10) annual installments of eleven thousand two hundred fifty (\$11,250.00) Dollars each, the first installments commencing one (1) year after date of final consummation;

provided, however, that such payments of sums as may be paid by RUAN to WAGGONER during the period of the temporary lease of authority as hereinafter described will reduce proportionately the said purchase price.

WAGGONER, on date of final consummation, delivers to RUAN a contract for sale of said property according to terms and conditions of sale as stated herein.

Upon date of last payment WAGGONER will deliver to RUAN a warranty deed conveying good and merchantible title to the described property, free and clear of all liens and encumbrances.

RUAN will, from and after date of final consummation, pay all real estate taxes on said property. WAGGONER will pay all taxes up to said date of final consummation.

Should WAGGONER make any capital improvements between date of this agreement and date of final payment, said purchase price will be increased by the cost thereof. No capital improvements shall be made without RUAN'S approval and consent.

10. Lease of Land and Buildings. RUAN further agrees to lease from WAGGONER the land and buildings described in Appendix C hereto for the duration of temporary lease of operating rights; and in rental payment thereof, RUAN will




pay to WAGGONER in cash or credits nine hundred (\$900.00) Dollars per month, provided, however, that all capital improvements which may be required in order to preserve the life and use of said buildings and use of said land shall be paid by WAGGONER with an appropriate adjustment in the monthly rental to defray any increase in depreciation or other cost or expense. In the event the purchase of rights herein contemplated ultimately is consummated, said rental payments will be applied in reduction of the purchase price. Should the purchase of rights not be consummated WAGGONER will retain all monies paid pursuant to this paragraph.

11. Inventories. Upon date of final consummation RUAN will purchase from WAGGONER existing inventories, such as tires and oil at WAGGONER'S cost.

12. Insurance. Up to date of final consummation, WAGGONER will insure the buildings from damage due to fire and extended coverage in an amount not less than seventy-five thousand (\$75,000.00) Dollars and will furnish RUAN a certificate of said coverage naming RUAN as an additional insured thereon. During period of temporary lease RUAN will carry public liability, property damage and collision insurance on the tractors and trailers listed on Appendix B and will furnish WAGGONER with a certificate of said coverage. WAGGONER will be named as an additional insured on RUAN'S policy.

13. Consummation. Within the allowable time set forth in the final order of the Commission and such other regulatory agency obtaining jurisdiction thereof approving this transaction, or such extensions of time as may be allowed, the parties hereto will execute or obtain the execution of an appropriate notice of consummation which thereafter, promptly will be filed with the said Commission and agencies.

14. Representations and Warranties. WAGGONER represents and warrants that it is and on the dates of consummation will be fully entitled to assign and transfer to RUAN the operating authorities and equipment set forth in the Appendices A and B hereto, and that said authorities, equipment to be transferred herein at the dates of consummation will be free and clear of all liens and encumbrances of every kind and description.

A handwritten signature and initials, possibly "J. H. A.", are written in the bottom right corner of the page.

15. Cancellation. In the event the Commission not grant the conversion of WAGGONER'S contract permit to a common carrier certificate or either the Commission or the authorized regulatory agencies restrict the authorities in any substantial manner unsatisfactory to RUAN, it may, at its option, declare the purchase agreement, as it relates to authority and real estate, null and void and cancel the lease of authority and real estate upon giving ten (10) days notice to WAGGONER.

16. Assignability. This Agreement or any portion thereof may be assigned by RUAN without the prior written consent of or notice to WAGGONER provided RUAN will remain liable for satisfaction of any of the terms of this agreement. WAGGONER has the right to cancel this agreement should the final order or judgment be in a manner unsatisfactory to RUAN and no assignment is made within sixty (60) days of the effective date of said final order or judgment.

17. Notices. Notices from one party to another shall be in writing and shall be mailed by certified mail, return receipt requested.

IN WITNESS WHEREOF, RUAN and WAGGONER have caused these presents to be duly executed by their respective appropriate officers hereunto duly authorized and their corporate seals affixed hereunto by their secretaries, all on the day first above written.

RUAN TRANSPORT CORPORATION

By [Signature]  
John Ruan, President

SEAL

Attest:

[Signature]  
Assistant Secretary

SEAL

Attest:

[Signature]  
Secretary

HAROLD WAGGONER AND COMPANY

By [Signature]  
Harold Waggoner  
President

[Signature]



27, with no transportation for compensation on return except as otherwise authorized.

RESTRICTION: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with the following shippers:

Wood Treating Chemicals Company, St. Louis, Mo.,  
Associated Sales and Supply Company, St. Louis, Mo.

#### MISSOURI INTRASTATE

Liquid Commodities, except petroleum and petroleum products and liquified petroleum gas and anhydrous ammonia, in bulk, in tank vehicle, via irregular routes,

In the Commercial Zone of St. Louis, Missouri, as defined by Section 390.111, sub-section 14, RSMo. 1959, as amended, or as defined by the Commission.

#### ILLINOIS INTRASTATE

Common: Ill. C. C. 9952 MC-CPR

Coal, cinders, rock and sand to or from any point or points within the State of Illinois.

Contract: Ill. C. C. 9952 MC-CPR

Commodities set forth in and pursuant to bilateral written contracts, filed or to be filed with the Illinois Commerce Commission, concerning the transportation of Chemicals in bulk in tank vehicles from East St. Louis, Illinois to and from points and places in Illinois.



INTERSTATE PERMIT  
MC-115873

\*

IRREGULAR ROUTES:

Liquid chemicals, in bulk, in tank vehicles (except liquid chemicals as described in Appendix XIII to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209),

From St. Louis, Mo., and East St. Louis, Ill., to points in Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Mississippi, New York, Ohio, Oklahoma, Tennessee, and Texas, with no transportation for compensation on return except as otherwise authorized.

Acids, and liquid chemicals, in bulk, in tank vehicles,

From St. Louis, Mo., and East St. Louis, Ill., to points in Maryland, with no transportation for compensation on return except as otherwise authorized.

SUB 5

IRREGULAR ROUTES:

Liquid chemicals, in bulk, in tank vehicles,

From St. Louis, Mo., and East St. Louis, Ill., to points in Alabama, Arkansas, Connecticut, Delaware, Louisiana, Massachusetts, Nebraska, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Vermont, West Virginia, Wisconsin, and that part of Maine south of a line beginning at the Maine-New Hampshire State line and extending along U. S. Highway 2 to Bangor, Maine, thence along Maine Highway 9 to the United States-Canada Boundary line, (restricted against the transportation of maleic anhydride from St. Louis, Mo., and East St. Louis, Ill., to points in Connecticut, Delaware, Massachusetts, New Jersey, Pennsylvania, Rhode Island, and West Virginia), with no transportation for compensation on return except as otherwise authorized.

RESTRICTION: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with Monsanto Chemical Company.

SUB 6

IRREGULAR ROUTES:

Pentachlorophenol, in bulk, in tank vehicles,

From St. Louis, Mo., and East St. Louis, Ill., to points in Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York (except points in Kings, Queens, Nassau, and Suffolk Counties), Pennsylvania, Ohio, Oklahoma, Texas, Wisconsin, and points in that part of Tennessee west of U. S. Highway

*[Handwritten signature and initials]*

# TRACTORS INCLUDING LICENSES

<u>NO.</u>	<u>YEAR</u>	<u>MAKE</u>	<u>VALUE</u>
144	1969	GMC	\$ 2,700
No #	1970	IHC	1,300
174	1973	REO	14,500
168	1973	REO	15,500
172	1965	Ford	1,000
170	1964	Ford	900
166	1973	Ford	13,000
164	1969	WFT	6,500
162	1969	WFT	6,500
170	1972	GMC	7,500
156	1970	IHC	6,600
148	1969	Ford	3,500
152	1969	Ford	3,500
146	1969	IHC	5,500

# TRAILERS INCLUDING LICENSES

<u>NO.</u>	<u>YEAR</u>	<u>MAKE</u>	<u>VALUE</u>	<u>NO.</u>	<u>YEAR</u>	<u>MAKE</u>	<u>VALUE</u>
45	1957	Frue.	\$1,250	153	1968	ACRO	\$ **
53	1958	Frue.	1,500	155	1968	ACRO	**
83	1961	Frue.	1,500	157	1968	ACRO	**
85	1962	Progress	2,000	159	1970	Frue.	**
87	1962	Progress	2,000	165	1961	Frue.	3,000
89	1962	Frue.	2,700	167	1964	Frue.	3,700
103	1963	Frue.	1,750	169	1970	ACRO	8,320
111	1964	Standard	**	171		ETNYRE	1,000
113	1964	Standard	**	173	1954	Frue.	500
115	1964	Standard	**	175	1959	Joplin	500
117	1964	Standard	**	177	1961	Frue.	1,320
119	1964	Standard	**	179	1961	Heil	2,700
121	1964	Standard	**	181	1958	Standard	2,400
123	1964	Standard	**	183	1970	Heil	7,140
125	1964	Standard	**	185	1973	T.M.	**
127	1964	Standard	**	187	1973	T.M.	**
129	1964	Standard	**	189	1961	Frue.	1,500
133	1966	ACRO	3,700	191	1961	Frue.	1,500

\*\* Units Not for Sale

# OTHER

All service, shop and office equipment, furniture, fixtures and tools operated by HAROLD WAGGONER AND COMPANY whether or not listed on the companies books and records.

DESCRIPTION OF LAND AND BUILDINGS

Address:

1300 Quincy Avenue  
Cahokia, Illinois

Area:

Approximately 21.36 acres

Buildings:

Office and terminal--approximately 70' by 100'  
House trailer.

*[Handwritten signature]*

*Wagoner file*

June 20, 1974

*6/27/74  
Mike Mefford  
- what's the charge  
per clean  
JIT*

*#9*

RECEIVED

JUL 5 1974

M. MEFFORD

*John - I wrote Monte earlier to  
\$30 minimum  
\$40 for 2 hours  
if solvent used - actual cost of solvent  
Normal cleaning time for product not set.  
- 1 hour.  
Mike*

JOHN RUAN III ✓

cc: Monte Beck  
Bill Giles  
Bob Schoolfield

I have made arrangements with Rogers Cartage to have trailers cleaned. Mr. J.D. Tolbird is Rogers's terminal manager in E. St. Louis. Tolbird confirmed today his home office had given the ~~ok~~,

Rogers' have an Olympic system; recirculating caustic, spinners, steam, hot and cold water flush, etc.

MIKE MEFFORD

*Mike*  
mm

EXHIBIT NO. 13  
RUAN TRANSPORT CORPORATION  
-PURCHASE-  
HAROLD WAGGONER & COMPANY  
DOCKET MC-F-12207  
MC 107496 SUB 951

INTERSTATE SHIPMENTS BY HAROLD WAGGONER & COMPANY  
FOR PERIOD BEGINNING 1-2-73 AND ENDING 3-19-74  
LISTED ACCORDING TO DESTINATION CITY AND STATE

PRODUCT MOVEMENTS

	<u>1-1-73 thru 3-19-74</u>	<u>6-3-74 to Present</u>
1. Cooper	2 loads to Texas	1 load to New Jersey
2. Allied	9 loads to McPherson, Kans.	
3. Glidden	22 loads to Tupelo, Miss.	14 loads to Tupelo, Miss.
4. Parker	2 loads to Newton, Ia.	6 loads to Iowa and Alabama
5. Proctor & Gamble	62 loads to Ohio, Illinois and Iowa	
6. Koppers	100 loads to Iowa, Illinois, Indiana, Kansas, Ohio, Tennessee	
7. Monsanto	538 loads	